Applicant Details

First Name	**Catherine**
Middle Initial	**G**
Last Name	**Dema**
Citizenship Status	**U. S. Citizen**
Email Address	**cdema@pennlaw.upenn.edu**
Address	**Address** Street **201 S. 25th St. Apt. 224** City **Philadelphia** State/Territory **Pennsylvania** Zip **19103** Country **United States**
Contact Phone Number	**8163059935**

Applicant Education

BA/BS From	**William Jewell College**
Date of BA/BS	**May 2021**
JD/LLB From	**University of Pennsylvania Carey Law School** **https://www.law.upenn.edu/careers/**
Date of JD/LLB	**May 20, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Journal of Law and Social Change**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Lee, Robert
roblee@vcrrc.org
Rudovsky, David
drudovsk@law.upenn.edu
215-898-3087
Harris, Jasmine
jasmineeharris@law.upenn.edu
(917)405-8910

This applicant has certified that all data entered in this profile and any application documents are true and correct.

June 12, 2023

The Honorable Jamar K. Walker
United States District Court
Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to request your consideration of my application for a clerkship beginning in the fall of 2024. I am a rising third-year law student at the University of Pennsylvania Carey Law School.

During law school, I have worked to develop legal analysis, research, and writing skills. As a summer law clerk at the Virginia Capital Representation Resource Center and as a legal extern at the Capital Habeas Unit at the Federal Community Defender Office in Philadelphia, I was challenged to think and communicate critically, creatively, and persuasively in advocating for clients. As an Executive Editor for the Journal of Law and Social Change, I have strengthened my editing, leadership, and organizational skills. Through coursework in appellate advocacy and seminar courses requiring submission of substantial legal research papers, I have expanded upon my attention to detail and writing skills, further developing a clear and concise style.

I am attaching my resume, transcript, and writing sample. Letters of recommendation from Professor David Rudovsky (drudovsk@law.upenn.edu); Professor Jasmine Harris (jasmineeharris@law.upenn.edu); and Rob Lee, Esq. (roblee@vcrrc.org) are also included. Please let me know if any other information would be useful. Thank you.

Respectfully,

Catherine G. Dema

Catherine G. Dema
201 S 25th St. Apt. 224
Philadelphia, PA 19103
cdema@pennlaw.upenn.edu
(816) 305-9935

EDUCATION

University of Pennsylvania Carey Law School, Philadelphia, PA
J.D. Candidate, May 2024

Honors: Levy Scholar, full tuition merit-based scholarship
Journal of Law & Social Change, Executive Editor
Activities: Student Public Interest Network, President
Penn Law Criminal Record Expungement Project

William Jewell College, Liberty, MO
B.A., *summa cum laude*, Physics and Oxbridge History of Ideas, May 2021

GPA: 3.908
Honors: Oxbridge Honors Scholarship
Honors Thesis in Physics: "*Double Diffusive and Rayleigh Taylor Instabilities in Particle-laden Water Stratified Over Salt Water in a Hele Shaw Cell"*
Honors Thesis in Oxbridge History of Ideas: "*The Role of Autonomy and Oppression in Desire, Consent, and Relationships"*
Activities: Gender Issues & Feminism Club, Founder and Engagement Chair
The Hilltop Monitor, Features and Investigations Page Editor
Study Abroad: University of Oxford, Hertford College, Oxford, UK, 2019 – 2020

EXPERIENCE

Regional Public Defender for Capital Cases, San Antonio, TX — May 2023 – Present
Summer Legal Intern
Write motions and briefs, draft pleadings, and conduct legal research for capital trials. Locate and interview witnesses, conduct in-person visits with clients and their families, and provide observations. Participate in team meetings and strategy sessions. Locate and obtain documents and records and gather statistical data.

Prison Legal Education Project, Philadelphia, PA — Oct. 2022 – Present
Post-Conviction Co-Chair
Consult with post-conviction organizations and attorneys, facilitate program to involve law students in pro bono legal research and writing for clients pursuing post-conviction relief. Write legal memos and conduct legal research to support incarcerated clients pursuing post-conviction relief. Attend visits to incarcerated people to provide legal education and answer questions about pursuing legal action while incarcerated. Draft curricula and materials to provide legal information for incarcerated people.

Federal Community Defenders Capital Habeas Unit, Philadelphia, PA — Jan. 2023 – May 2023
Legal Extern
Drafted briefs, persuasive claims, and memos for use in state and federal post-conviction petitions, including on ineffective assistance of counsel, timeliness of post-conviction petitions, and categorical cruel and unusual punishment. Conducted legal and factual research on state and federal post-conviction and capital habeas law. Attended court hearings and legal visits with incarcerated clients.

Custody and Support Assistance Clinic, Philadelphia, PA
Advocate Sept. 2022 – April 2023
rafted petitions, conducted intake interviews for pro se litigants in the Philadelphia Family Court system, and helped craft arguments through pro bono project in partnership with Philadelphia Legal Assistance.

Virginia Capital Representation Resource Center, Charlottesville, VA
Summer Law Clerk May 2022 – July 2022
Drafted persuasive inserts for claims within motions for post-conviction relief. Conducted legal and factual research on capital habeas law in a variety of states and circuits, and wrote memoranda presenting legal and factual research. Drafted claims in collaboration with law clerks and attorneys. Attended legal visits with incarcerated clients. Reviewed court documents and transcripts on PACER and attended court hearings.

Penn Law International Refugee Assistance Project, Philadelphia, PA
Court Monitoring Project Volunteer Sept. 2021 – May 2022
Researched immigration court closures. Interviewed attorneys representing clients at the closed courts and detention centers and wrote report presenting findings.

William Jewell College Physics Department, Liberty, MO
Undergraduate Researcher June 2017 – May 2021
Designed and conducted research projects; created optical imaging systems; trained and supervised research assistants. Wrote proposals and conducted presentations at college and national research conferences. Volunteered for STEM outreach to elementary students in Kansas City Public Schools.

Cornell Laboratory for Accelerator-Based Sciences and Education, Ithaca, NY
NSF REU Physics Researcher June 2019 – Aug. 2019
Used Python programming to model optical systems and light optics designs. Created and presented written and oral research reports. Volunteered for STEM outreach to elementary students in Ithaca, NY.

INTERESTS
Podcasts, exploring local coffee shops and restaurants, casual biking and indoor cycling.

Catherine G. Dema
UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

Spring 2023

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Crimmigration	Rodriguez	A-	3	
Education and Disability Law	Harris	A	3	
Externship: Federal Defender Capital Habeas Unit	Bluestine	CR	7	
JLASC Independent Research Seminar	Ossei-Owusu	CR	1	
Externship Tutorial	Bluestine	CR	0	
Journal of Law and Social Change Associate Editor	Kreimer	CR	0	

Fall 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Constitutional Criminal Procedure	Rudovsky	A-	3	
Appellate Advocacy	Sweitzer	B+	3	
Evidence	Mayson	A-	4	
Community Lawyering to End Mass Incarceration	Grote/Holbrook	A	2	
JLASC Independent Research Seminar	Kreimer	CR	1	
Journal of Law and Social Change Associate Editor	Kreimer	CR	1	

Spring 2022

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Criminal Law	Ossei-Owusu	A-	4	
Constitutional Law	Kreimer	A-	4	
Plagues, Pandemics, and Public Health Law	Feldman	A-	3	
Administrative Law	Lee	A-	3	
Legal Practice Skills Cohort	Ramirez	CR	0	
Legal Practice Skills	Gowen	CR	2	

Fall 2021

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Civil Procedure	Wang	B+	4	
Contracts	Hoffman	A	4	
Torts	deLisle	A-	4	
Legal Practice Skills Cohort	Ramirez	CR	0	
Legal Practice Skills	Gowen	CR	4	

VIRGINIA CAPITAL REPRESENTATION RESOURCE CENTER

2421 IVY ROAD, SUITE 301
CHARLOTTESVILLE, VIRGINIA 22903

(434) 817-2970 TELEPHONE
(434) 817-2972 FACSIMILE

May 1, 2023

Letter of Recommendation in Support of Catherine G. Dema
for a Judicial Clerkship

Your Honor:

Please accept this letter in strong support of Catherine G. Dema's application for a judicial clerkship position. I met and became familiar with Catherine's work as the Executive Director of the Virginia Capital Representation Resource Center (VCRRC) when I supervised her as a law clerk during the summer of 2022. Catherine had just completed her first year of law school at the University of Pennsylvania.

VCRRC is a small not-for-profit law firm founded in 1992 to improve the quality of representation in capital cases through direct representation, consultation, and education services. In the decades that followed, VCRRC served both as counsel in direct representation of clients sentenced to death and as a centralized resource office providing consultation, training, and assistance to those representing people facing death sentences in Virginia.

At VCRRC, law clerks like Catherine serve on teams representing our clients. They worked directly with lawyers, investigators, and legal assistants on current issues in the litigation. Clerks help to identify, investigate, research, develop, and draft the factual and legal bases for the post-conviction claims in both state and federal courts. Their work directly impacts the litigation of client's cases.

Catherine was an excellent and welcome addition to our litigation teams. Two projects she completed during the summer were on behalf of people sentenced to death in federal courts in Texas and Virginia. The first was part of a reply to the government's motion to dismiss claims in a petition for relief under 28 U.S.C. § 2255 and involved an analysis of the sufficient of trial counsel's objections to witness testimony. It required intensive review and research of the statutes making up the Federal Death Penalty Act as well as the Federal Rules of Evidence. In the second project, also part of a Section 2255 case, Catherine developed arguments regarding the propriety of bifurcating an evidentiary hearing in a manner that would limit review to only a single requisite element of the claim. The government had argued that a narrow review would be more efficient. (The judge ultimately ruled in our favor.)

The nature of our work required Catherine to work independently and in collaboration with others. Finished drafts were required in adherence with deadlines. Quality product was expected. (I have come to appreciate that some members of our small staff are particularly demanding with regard to the detail and precision of written work product.) Catherine performed remarkably in each area. She asked good questions, sought clarity when appropriate, and delivered immediately useful products on time and in the form requested. She was a pleasure to work with as well, mindful of everyone's time while remaining personable and engaging, appropriate to the situation, and with a good sense of humor (a trait we value).

The stakes for our clients and staff are especially high, and scrutiny by our opponents and the courts can be exacting. Catherine respected these circumstances, and her work suggested she was not intimidated or hampered by them. I believe she is particularly well-suited to be part of a team in chambers, and will contribute significantly to what I imagine can be a fast-paced environment that also requires thoughtful analysis, research, and writing.

Based on my experience, I believe Catherine would make a significant contribution to assist the Court in meeting its various goals and responsibilities. I encourage the Court to get to know her yourself. I think you will find her to be an asset to your chambers.

Wishing you all the best.

My regards,

Rob Lee
Executive Director

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Catherine Dema

Dear Judge Walker:

I write in support of the application of Catherine Dema for a clerkship in your Court. I am a Senior Fellow at the Law School where I teach courses in Criminal Law, Constitutional Criminal Procedure, and Evidence. In addition, for the past 50 years I have maintained a public interest/civil rights law practice in Philadelphia. In my teaching and law practice, I have had the opportunity to supervise many law students in internships, summer associate positions, and independent studies. As a result, I have developed a good understanding of student potential and the likely success of students in clerkships and other post-graduate positions.

Ms. Dema came to Penn Law as a Levy Scholar, a full tuition merit-based scholarship program. She graduated summa cum laude from William Jewell College with honors in both physics and history of idea and with a strong interest in criminal justice issues. At Penn Law, Ms. Dema has assembled an impressive academic record with grades almost entirely in the “A” and “A-” categories over her first three semesters. In addition, she currently serves as Executive Editor of the Penn Law Journal of Law and Social Change. She plans a career in criminal defense with a focus on capital cases and appellate advocacy and has engaged in internship and externship programs with the Federal Community Defender Capital Habeas Unit and the Virginia Capital Representation Resource Center (and his summer she will intern with the Texas Regional Defender Capital Case program) all in preparation for this field of work.

Ms. Dema was a student in my course in Constitutional Criminal Procedure and I had a good opportunity to evaluate her academic abilities. Her final examination and her classroom participation showed a strong understanding of the course materials, a full comprehension of doctrinal principles, the factors that shape investigative and trial practices, and the intersection of evidence, criminal law and constitutional restrictions on law enforcement practices.

In my discussions with Ms. Dema regarding her career goals and judicial clerkships, she has articulated a very strong interest in criminal justice issues and in particular capital defense litigation. I have no doubt but that she will practice very successfully in these areas. She sees a clerkship as an opportunity to improve her research and writing and analytical skills in areas other than criminal justice. She also expects that a clerkship will allow her to focus on courtroom advocacy and the qualities that ensure effective representation of clients.

Ms. Dema’s academic record and her work over the past several years demonstrate significant strengths in the qualities that make for an excellent law clerk. She is intelligent, mature, and focused and he will fit well into your chambers. I recommend her without reservation.

Sincerely,

David Rudovsky
Senior Fellow
Tel.: (215) 898-3087
E-mail: drudovsk@law.upenn.edu

UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Clerkship Applicant Catherine Dema

Dear Judge Walker:

I write to enthusiastically recommend Catherine Dema, a student in my Education and Disability Law seminar, for a clerkship in your chambers. The seminar environment has enabled me to develop a close relationship with Catherine who has impressed me consistently throughout the semester with her intellectual curiosity, a deep engagement with the law, collegiality, and strong writing skills.

First, Catherine is intellectually curious and seeks to understand a case from multiple angles. She consistently raised questions, the answers to which, complicated standard narratives and perspectives on an issue. What are the stakes? What are the stakes of an erroneous outcome? Who bears the cost of error? In the context of special education law, for example, Catherine sought to understand the equities of the administrative process and the challenges parents face navigating a system designed as a foil to the adversarial process. Does this informality track the realities and experiences of the users? Catherine's insights deepened and shaped the direction of class discussions for the betterment of the group. Catherine connected dots across areas of law, for example, thinking through the Individuals with Disabilities Education Act as spending clause legislation, and what this means for its interpretation when situated in this broader framework. She can identify the specific questions of a case and zoom out to understand how the application of a statute to a particular set of facts operates in the broader context of the statute's (and similar statutes') interpretation.

Second, Catherine displays an eagerness and willingness to engage with others in collective thinking about legal interpretation and analysis. She takes time to listen to her peers and makes space for others in the conversation. This practice earned her the respect of her peers in the classroom.

Third, Catherine's writing is clear, organized, and nuanced. Catherine's research paper for the Education and Disability Law seminar examines the legal category of "emotional disturbance" under the Individuals with Disabilities Education Act and its interpretation by administrative judges and federal courts. The paper requires her to engage with Congressional intent, legislative history, administrative decisions, and those of federal courts. She has navigated these materials seamlessly. Of note, Catherine has also displayed the flexibility and resilience required of the best researchers. When her initial research challenged her early thesis, she made the necessary adjustments with a respect for the research process that is less common among law students. Her time management skills created space for her research process to unfold successfully.

Catherine Dema will make a fantastic law clerk. Her innate curiosity about the law coupled with strong writing skills and collegiality will enhance your chambers. Please do not hesitate to reach out with any questions about Catherine.

Sincerely,

Jasmine E. Harris
Professor of Law
jashar@law.upenn.edu

Catherine G. Dema
201 S 25th St. Apt. 224
Philadelphia, PA 19103
cdema@pennlaw.upenn.edu
(816) 305-9935

This writing sample is an excerpt from a persuasive brief I wrote for an Appellate Advocacy course at Penn Carey Law. The brief argues there was a violation of the Fourth Amendment right against unreasonable search and seizure when police conducted a vehicle stop based on an informant tip and frisked a passenger of the vehicle. The brief was originally 24 pages. The excerpt includes the argument portion of the brief. I have omitted the Statement of the Issues, Statement of the Case, and Summary of the Argument. This brief received general, nonspecific feedback through its development.

Argument

I. Police lacked a particularized and objective basis for suspecting a vehicle was involved in criminal activity, given the reliability and content of the tip directing police to the vehicle.

Standard of Review

In reviewing the denial of a motion to suppress, the Third Circuit exercises de novo review over the district court's legal conclusions and exercises clear error review over factual findings. *United States v. Price*, 558 F.3d 270, 276 (3d Cir. 2009). Whether police had sufficient reasonable suspicion to stop a vehicle, including the subordinate issues of reliability and content of the tip leading police to the vehicle, is a question of law. *United States v. Brown*, 159 F.3d 147, 148 (3d Cir. 1998). Review of this issue is therefore de novo. *Id.*

Discussion

Police officers may not conduct warrantless vehicle stops without probable cause unless officers have a reasonable suspicion the particular persons in the vehicle are involved in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 30 (1968); *see also Navarette v. California*, 572 U.S. 393, 396 ("The Fourth Amendment permits brief investigative stops—such as the traffic stop in this case—when a law enforcement officer has 'a particularized and objective basis for suspecting the particular person stopped of criminal activity.'").

Police lacked a particularized and objective basis for stopping Mr. Washington's vehicle because they conducted the stop based on an unreliable and insufficient tip. Because the vehicle seizure was unlawful, this Court must suppress the evidence obtained in the course of the stop under the exclusionary rule and the fruit of the poisonous tree doctrine.

a. The informant tip was insufficiently reliable and lacked sufficient content to motivate reasonable particularized suspicion that Mr. Washington's vehicle was involved in criminal activity.

Police conducted the stop based solely on an insufficient informant tip from White about suspected credit card fraud. Informant tips prompting investigatory stops are evaluated for their reliability and content to determine whether officers had reasonable suspicion to conduct the stop. *United States v. Goodrich*, 450 F.3d 552, 560 (3d Cir. 2006); *United States v. Valentine*, 232 F.3d 350, 355 ("The reliability of a tip, of course, is not all that we must consider in evaluating reasonable suspicion; the content of the tip must also be taken into account, as well as other surrounding circumstances.").

Reasonable suspicion in an investigatory stop requires officers have a particularized and objective basis to suspect criminal activity was afoot. *Goodrich*, 450 F.3d at 552 ("The content of the tip, concomitantly, must provide a particularized and objective basis for suspecting (1) the particular persons stopped (2) of criminal activity."); *Florida v. J.L.*, 529 U.S. 266, 272 (2000) ("The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person."). "The ultimate question is whether a reasonable, trained officer standing in [Donnelly's] shoes could articulate specific reasons justifying [the vehicle's] detention." *Johnson v. Campbell*, 332 F.3d 199, 206 (3d Cir. 2003).

Courts evaluate the reasonableness of the stop in light of the collective police knowledge at the time of the stop. *See United States v. Whitfield*, 634 F.3d 741 (3d Cir. 2010) (applying the collective knowledge doctrine to a *Terry* stop involving a fast-paced and dynamic situation wherein "officers worked together as a unified and tight-knit team"). Accordingly, the entire tip provided by White to police dispatch, Harris, and—as well as Donnelly's observations before the stop—is relevant to evaluating the stop's unreasonableness.

Officers unreasonably stopped the vehicle because they relied on an informant of questionable credibility providing a tip requiring officers to assume a connection between Mr. Brown and Mr. Washington not present in the tip's content. The tip's content lacked a particularized and objective basis for suspecting Mr. Washington and his vehicle of credit card fraud. Such a suspicion relies on presumed connections between two separate customers, not a logically necessary or objective connection.

i. The informant was insufficiently reliable in providing the tip motivating police officers' stop of Mr. Washington's vehicle.

White was insufficiently reliable in providing the tip. He relayed second and third-hand information to police about Mr. Washington and Mr. Brown's actions. Officers hearing from White could not determine the credibility of those with personal knowledge of the Mr. Brown's transaction or Mr. Washington's transaction. Officers should have known White relayed the information through the lens of his mall experience, which is not the kind of expertise and experience officers may rely on in determining the reasonableness of a tip-motivated stop. This Court must consider informant reliability in assessing the reasonableness of a stop as part of the totality of the circumstances motivating the stop.

White was an unreliable informant because he conveyed information about which he lacked personal knowledge. White provided in-person information in addition to his phone call to police dispatch, but only White's reports of his own actions could be evaluated for their credibility. *See Valentine*, 232 F.3d at 354 (describing face-to-face tips as more reliable than anonymous tips because "the officer has an opportunity to assess the informant's credibility and demeanor" in a face-to-face tip). Police had no opportunity to assess the credibility of the sales associate who identified Mr. Washington as suspicious or the store manager who observed Mr. Brown's transaction. White himself did not witness suspicious behavior—he reported suspicions

of other mall employees. White's tip lacked the typical indicia of reliability present in an in-person tip. *See id.*; *see also J.L.*, 529 U.S. at 269 (describing indicia of reliability necessary for an anonymous tip to be reliable).

In light of the total circumstances, White's tip is not sufficiently reliable. Even if officers believed White's demeanor, voice and other factors supported his credibility, *Valentine*, 232 F.3d at 355, he explicitly relayed information from sources officers could not evaluate. White presented his understanding of the situation after evaluating the information shared with him and in light of his experience as a security employee. Police may draw on their own experience and expertise when determining the reasonableness of conducting an investigatory stop, but they may not similarly rely on the presumed experience and knowledge of an informant. *See United States v. Arvizu*, 534 U.S. 266, 273 (2002) (permitting "officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that 'might well elude an untrained person'" when making reasonable suspicion determinations).

While Neiman Marcus employed White to protect merchandize, officers lacked information about White's skill and competency when they assumed the tip was reliable based on White's demeanor. In fact, White had a history of termination for overzealously stopping customers. While officers could not have known White's history, they should not have accepted his expertise as they would police expertise. White relayed second and third-hand information about potentially suspicious activity as a mall employee. He was an insufficiently reliable informant given the content of his tip to police.

ii. The informant tip lacked sufficient content to create reasonable suspicion Mr. Washington's vehicle and the particular persons stopped were engaged in criminal activity.

The content of White's tip was insufficient to motivate the stop of Mr. Washington's vehicle because it did not sufficiently connect Mr. Washington to any criminal activity. A tip's content is insufficient unless it simultaneously provides a "particularized and objective basis for suspecting (1) the particular persons stopped (2) of criminal activity." *Goodrich*, 450 F.3d at 560. White's tip failed to provide a particularized and objective basis for police's suspicion of Mr. Washington's vehicle of criminal activity.

Suspected of Criminal Activity

Officers unreasonably stopped Mr. Washington's vehicle because the tip failed to allege specific criminal activity of Mr. Washington and his vehicle. White's tip connected the vehicle only to Mr. Washington, whose allegedly suspicious activities included purchasing a Prada bag as someone from New York. The tip did not connect the vehicle to Mr. Brown's more suspicious conduct or any confirmed fraud. White's tip did not provide any detail indicating Mr. Washington was involved in criminal activity. *See United States v. Ubiles*, 224 F.3d 213 (3d Cir. 2000) (holding a stop unreasonable when a tip alleged the defendant had a gun in a crowded area where gun possession was not illegal failed to allege criminal activity).

While White suspected criminal activity was afoot, Mr. Washington engaged in purely lawful activities that did not indicate suspicion. An officer may not conduct a stop simply because some criminal activity is afoot. *United States v. Brown*, 159 F.3d 147, 149 (3d Cir. 1998). Officers must have particularized suspicion against the stopped individual. *Id.* Even though "a reasonable suspicion of criminal activity may be formed by observing exclusively

legal activity," *Ubiles*, 224 F.3d at 217, here, the tip failed to sufficiently allege Mr. Washington's vehicle was tied to criminal activity.

When individual innocent factors are used for a tip to suspect criminal activity, the combination of factors "must serve to eliminate a substantial portion of innocent [customers]." *United States v. Mathurin*, 561 F.3d 170 (3d Cir. 2009). White, and police officers, suspected Mr. Washington specifically only because he had New York identification and bought a Prada bag. Despite mall employee reports of past issues with New Yorkers, the factors involved do not serve to eliminate a substantial portion of innocent customers.

White himself could not articulate specific reasons the sales associate deemed Mr. Washington suspicious, but referenced security employees evaluating whether a customer looks like they "can't afford the item they are buying." (App. 105).[1] White's inability to articulate why he singled out Mr. Washington as suspicious shows the content of the tip lacked an objective and particularized basis for suspicion. Mr. Washington's conduct alone does not provide officers with reasonable suspicion he was involved in criminal activity.

Mr. Brown's conduct, too, does not provide reasonable suspicion Mr. Washington was involved in criminal activity. Mr. Brown's innocent actions were subject to greater suspicion because officers knew two of Mr. Brown's credit cards declined in his attempted transaction. Yet, a suspicious transaction occurring after several minutes after Mr. Washington's departure does not provide sufficient suspicion Mr. Washington was involved in criminal activity.

Courts evaluate reasonable suspicion based on a tip given the totality of the circumstances. *Brown*, 448 F.3d at 246–47 ("In evaluating whether there was an objective basis for reasonable suspicion, [the court] consider[s] 'the totality of the circumstances—the whole

[1] Racial biases may contribute to the belief Black men are less likely to afford expensive purchases, regardless of whether their other actions suggest fraud or suspicious activity.

picture.'"). Mr. Brown's actions fifteen minutes after Mr. Washington's purchase do not provide adequate suspicion Mr. Washington or his vehicle were involved in criminal activity. As one of the largest in the country, the mall made several calls alerting police of suspicious activity. Suspected suspicious activity at the mall on a Saturday afternoon fifteen minutes after Mr. Washington's purchase by another New Yorker would not serve to exclude a substantial portion of innocent customers. Mr. Brown's conduct does not provide sufficient reasonable suspicion against Mr. Washington.

Particular persons stopped

White's tip failed to particularize suspicion against the particular persons stopped—Mr. Washington and his vehicle—because such particularized suspicion requires an improper, unsupported inference Mr. Brown and Mr. Washington were connected. White told police that Mr. Washington purchased a Prada bag, presented New York identification, and left the mall to get in his vehicle. White told police that Neiman Marcus had issues with fraud with people from New York, but this information is vague, unconfirmed, and does not provide reasonable suspicion Mr. Washington himself engaged in criminal activity sufficient to justify a stop. Police officers lacked particularized suspicion against Mr. Washington and his vehicle; they conducted the stop because officers improperly assumed a connection between Mr. Washington and Mr. Brown and his failed purchases.

Police lacked an objective basis on which to assume a connection between Mr. Brown and Mr. Washington because the two men were never seen together, initiated transactions fifteen minutes apart, and left the store to different locations. White himself witnessed Mr. Washington leave the mall, enter the parking lot, get in his vehicle and leave. White explicitly told police he trailed Mr. Washington to his vehicle. After following Mr. Washington, White learned of Mr.

Brown's transaction and proceeded to follow him. White trailed Mr. Brown out of the Gallery to the Pavilion—a separate section of the mall. Mr. Brown entered the Pavilion, at which point White called police and notified them of trailing Mr. Brown to the crosswalk between mall sections. White did not observe Mr. Brown in the process of leaving the mall or getting in any car, let alone Mr. Washington's. The content of White's tip described these two separate paths and did not insinuate the men were seen together.

A sufficient tip's content must provide a particularized and objective basis for suspecting the particular individual of criminal activity. *Goodrich*, 450 F.3d at 560. White's tip failed to provide a particularized suspicion of Mr. Washington because the only connection between the two the tip alleged was that both men presented New York identification and initiated purchases of Prada bags fifteen minutes apart. The tip did not provide an objective connection between Mr. Brown and Mr. Washington or between Mr. Brown and Mr. Washington's vehicle. Accordingly, the tip's content insufficiently particularized suspicion to Mr. Washington's vehicle. The stop was unreasonable because White's tip did not allege Mr. Washington was involved in criminal activity nor did it particularize suspicion against Mr. Washington.

Donnelly's observations of the vehicle prior to the stop did not corroborate or strengthen any suspicion of criminal activity. Donnelly did not testify to any abnormal or suspicious behavior conducted by the vehicle. The tip's content, therefore, provided the entire basis for the stop despite failing to particularize suspicion against Mr. Washington or allege Mr. Washington was involved in criminal activity.

b. The credit cards obtained from Mr. Brown in the course of the illegal stop must be suppressed under the "fruit of the poisonous tree" doctrine.

Because Donnelly unreasonably stopped Mr. Washington's vehicle, the evidence obtained from Mr. Brown in the course of the stop must be suppressed. As a passenger in an illegally stopped vehicle, Mr. Brown has standing to object to the fruits of the unlawful seizure.

When police conduct an illegal stop of a vehicle, all passengers in the vehicle are also seized. *See Arizona v. Johnson*, 555 U.S. 323, 327 (2009) ("For the duration of a traffic stop . . . a police officer effectively seizes 'everyone in the vehicle,' the driver and all passengers"); *United States v. Mosely*, 454 F.3d 249, (3d Cir. 2006). A passenger is seized for the duration of the stop. *Johnson*, 555 U.S. at 333. Seized passengers have standing to object to the stop and seek to suppress "evidentiary fruits of [an] illegal seizure under the fruit of the poisonous tree doctrine." *Mosley*, 454 F.3d at 253. When there is a factual nexus between the illegal stop and the evidence obtained, the evidence is improperly obtained and is fruit of the poisonous tree that must be suppressed. *Id.* at 254.

When officers illegally stopped Mr. Washington's vehicle, Mr. Brown was seized, and police improperly obtained evidence from Mr. Brown. Because Mr. Brown is challenging the illegal vehicle seizure, not an illegal vehicle search, he has standing to challenge evidence obtained in the course of the seizure. *Id.* at 253. Here, the credit cards retrieved from Mr. Brown's sock are the fruit of the illegal stop. There is no question of the factual nexus between the stop and the evidence obtained. *Id.* at 256 ("Where the traffic stop itself is illegal, it is simply impossible for the police to obtain the challenged evidence without violating the passenger's Fourth Amendment rights."). The evidence found on Mr. Brown must be suppressed.

II. Police lacked a reasonable belief Mr. Brown was armed and dangerous given Mr. Brown moved in a seized vehicle with tinted windows suspected of involvement with credit card fraud.

Standard of Review

In reviewing the denial of a motion to suppress, the Third Circuit exercises de novo review over the district court's legal conclusions and exercises clear error review over factual findings. *Price*, 558 F.3d at 276. Whether police had a reasonable suspicion Mr. Brown was armed and dangerous is a question of law. *United States v. Edwards*, 53 F.3d 616, 618 (3d Cir. 1995) (conducting plenary review over whether the facts supported a reasonable inference the suspect was armed and dangerous). Review of the issue is therefore de novo. *Id.*

Discussion

Burnett's frisk of Mr. Brown violated the Fourth Amendment protections against unreasonable searches. Even if the court rules that the stop was reasonable, the frisk leading to recovery of evidence against Mr. Brown mandates suppression of the evidence.

A frisk is "a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment." *Terry* 392 U.S. at 17. A frisk is unreasonable unless officers had a reasonable belief the suspect is armed and dangerous. *Id*. Police officers may not conduct a reasonable search for weapons unless they have "reason to believe that [they are] dealing with an armed and dangerous individual." *Id.* at 27. An officer does not need to be certain a suspect is armed. *Id.* If a reasonable officer in their position would be warranted in the belief the suspect is armed and dangerous, then a frisk is reasonable. *Id.* Officers must have a particularized, articulable suspicion the suspect is armed and dangerous.

Burnett unreasonably frisked Mr. Brown because he lacked a reasonable belief Mr. Brown was armed and dangerous at the time of the frisk. Before Burnett frisked Mr. Brown, he

saw Mr. Brown's empty hands and Mr. Brown complied with all requests. Burnett lacked a sufficient particularized suspicion that Mr. Brown was armed and dangerous at that moment, so Burnett unreasonably searched Mr. Brown. The evidence recovered should be suppressed under the fruit of the poisonous tree doctrine.

a. Officer Burnett unreasonably frisked Mr. Brown because a reasonable officer in Burnett's position could not provide a reasonable, articulable suspicion that Mr. Brown was armed and dangerous at the time of the frisk.

Burnett lacked reasonable suspicion Mr. Brown was armed and dangerous when he frisked Mr. Brown because any potential risk relaxed before the frisk. Even if officers had reason to stop the car, they still needed particularized reasonable suspicion Mr. Brown in particular was armed and dangerous to justify the frisk. *Terry*, 392 U.S. at 21 ("[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion."). The test is "whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Id.*

Suspected credit card fraud does not make it more likely Mr. Brown was armed and dangerous. Police officers suspected Mr. Washington's vehicle of credit card fraud and had no particularized information about any passenger. Credit card fraud at the mall is not a violent crime, nor is it a bold crime whose nature suggests armed perpetrators. *See Edwards*, 53 F.3d at 618 (holding that an attempted daylight bank robbery "could lead one to believe that the perpetrators might have armed themselves to facilitate their escape if confronted").

In *Edwards*, police were notified of credit card fraud occurring at a bank in broad daylight. *Id.* The court deemed officers' suspicion the passengers were armed and dangerous reasonable because committing fraud at a bank in broad daylight is a risky activity where

perpetrators could reasonably have weapons to use in the event they were confronted. *Id.* Unlike in *Edwards,* here police suspected the vehicle of involvement in low-level credit card fraud occurring at a busy mall on a Saturday afternoon. The suspected criminal activity did not suggest armed perpetrators, so the suspected crime did not make it more likely that Mr. Brown was armed and dangerous.

Burnett's stated reasons for frisking Mr. Brown included the vehicle's tinted windows and Mr. Brown's movements in the backseat of the car. *See Leveto v. Lapina*, 258 F.3d 156, 165 (evaluating the facts police officers alleged motivated the frisk in finding the search of the defendant unreasonable). Burnett acted on his suspicions by opening the passenger door and ordering the passenger out. Burnett observed Mr. Brown and saw he lacked a weapon, yet Burnett still proceeded with the frisk. Burnett's provided reasons fail to justify the frisk because they do not particularize a suspicion Mr. Brown was armed and dangerous after he already exited the vehicle.

Burnett lacked particularized suspicion Mr. Brown was armed and dangerous based on the tinted windows because concerns about the windows should have been relaxed after Mr. Brown exited the car. Tinted windows may contribute to concerns occupants are armed. Officers could have requested all vehicle occupants exit the car if they feared for their safety due to the tinted windows. Just because a vehicle is connected to criminal activity, all occupants are not automatically connected to the criminal activity. *See Ybarra v. Illinois*, 444 U.S. 85, 90 (1979) (holding that possession of a warrant to search a premises alone is not sufficient to justify a pat down of a person found on the premises). Officers connected Mr. Washington, not other passengers, to suspected credit card fraud. No officers, including Burnett, knew the passengers' identities nor whether passengers were connected to the suspected fraud.

Suspecting the vehicle of criminal activity does not justify frisking passengers unless an officer in the situation would reasonably believe that specific passenger was armed and dangerous. In *Ybarra v. Illinois*, police officers had a warrant to search a bar; the warrant specifically mentioned a bartender, but no customers. *Id.* at 87–88. Officers proceeded to frisk patrons while executing the warrant. *Id.* at 88. They frisked the defendant two distinct times before retrieving drugs from his possession on the second frisk. *Id.* at 88–89. Officers had no probable cause to suspect the patrons were involved in illegal activity. *Id.* at 90–91. The court ruled that officers lacked reasonable suspicion to frisk the defendant because no officers recognized him as a person with a criminal history or had any reason to think he may assault the officers. *Id.* at 93. The defendant's "hands were empty [and he] gave no indication of possessing a weapon, made no gestures or other actions indicative of an intent to commit an assault, and acted generally in a manner that was not threatening." *Id.* The state could not articulate specific facts that would have justified an officer in suspecting the defendant was armed and dangerous. *Id.*

Mr. Brown's presence in a vehicle suspected of criminal activity did not justify Burnett's frisk. At the time of the stop, Mr. Brown was not connected to the suspected fraud. Mr. Brown complied with all officer orders and had empty hands when he exited the car. Burnett's claims that tinted windows and Mr. Brown's movements in the car motivated his frisk do not articulate specific facts that would have justified an officer in suspecting Mr. Brown was armed and dangerous at the time of the frisk.

Mr. Brown's movements in the backseat do not justify the frisk because concerns about his movements should have been relaxed after Mr. Brown exited the car. When Burnett saw Mr. Brown "disappear" by leaning over, Burnett opened the car door. Burnett saw Mr. Brown's hand

near his foot, as though he stashed something under the seat or retrieved something. Burnett grabbed Mr. Brown and ordered he exit the car. Mr. Brown complied. At that moment, if Mr. Brown possessed a weapon, it would have been in one of two locations: under the seat or in Mr. Brown's hand.

When Mr. Brown exited the car, he could no longer reach any potential weapon under the seat. Burnett saw Mr. Brown's empty, weaponless hands. Once Mr. Brown exited the car, away from the seat, and complied with orders any fears Burnett had that Mr. Brown was armed and dangerous should have dissipated. *See United States v. Moorefield*, 111 F.3d 10, 11 (3d Cir. 1997) (holding that defendant's failure to follow instructions contributed to officers' reasonable suspicion the defendant was armed and dangerous).

The factors Burnett presents as motivating the stop fail to justify Burnett's frisk of Mr. Brown. In *United States v. Brown*, an officer frisked two suspects solely because a robbery occurred several blocks away. *Brown*, 448 F.3d at 243. The officer said he planned to frisk the suspects regardless of their compliance. *Id.* The court held officers lacked reasonable suspicion to frisk the suspect given the totality of the circumstances because "each of the factors argued to support reasonable suspicion . . . and frisk him . . . underwhelms." *Id.* at 252. Similarly, Burnett patted down Mr. Brown primarily due to suspected credit card fraud, and each justification for the frisk underwhelms. A reasonable officer in Burnett's position would not have reasonable suspicion Mr. Brown was armed and dangerous at the time of the frisk.

Considering the totality of the circumstances, a reasonable officer in Burnett's position would not have reasonably suspected Mr. Brown was armed and dangerous at the time of the frisk. Given Burnett's articulated reasons, his description of Mr. Brown reaching below his seat, Mr. Brown's compliance with Burnett's orders, and Mr. Brown's empty hands upon exiting the

vehicle, Burnett lacked reasonable suspicion Mr. Brown was armed and dangerous at the time of the frisk. Burnett, therefore, unreasonably frisked Mr. Brown.

b. The credit cards obtained from Mr. Brown due to the illegal frisk must be suppressed under the "fruit of the poisonous tree" doctrine.

Because Burnett unreasonably frisked Mr. Brown, the evidence obtained from Mr. Brown due to the frisk must be suppressed. Burnett frisked Mr. Brown so Mr. Brown has standing to object to the fruits of the poisonous tree.

When police make an illegal search and there is a factual nexus between the illegal search and the evidence obtained, the evidence is improperly obtained and is fruit of the poisonous tree that must be suppressed.

The credit cards retrieved from Mr. Brown's sock are the fruit of the illegal stop. There is no question of the factual nexus between the frisk and the evidence obtained. *See Mosely*, 454 F.3d at 256 ("Where the traffic stop itself is illegal, it is simply impossible for the police to obtain the challenged evidence without violating the passenger's Fourth Amendment rights."). Thus, this Court must suppress the evidence.

Applicant Details

First Name	**Hunter**
Last Name	**Dickerson**
Citizenship Status	**U. S. Citizen**
Email Address	**hwd4@duke.edu**
Address	**Address** Street **2530 Erwin Rd, Apt. 224** City **Durham** State/Territory **North Carolina** Zip **27705** Country **United States**
Contact Phone Number	**7025966370**

Applicant Education

BA/BS From	**Syracuse University**
Date of BA/BS	**June 2018**
JD/LLB From	**Duke University School of Law** **https://law.duke.edu/career/**
Date of JD/LLB	**May 5, 2023**
Class Rank	**School does not rank**
Does the law school have a Law Review/ Journal?	**Yes**
Law Review/Journal	**No**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Demidovich, Lisa
ldemidovich@bushgottlieb.com
818-973-3220
Bowling, Dan
Bowling@law.duke.edu
919-613-8547
Gordon, Anne
agordon@law.duke.edu
919-613-8563

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Hunter Dickerson
2530 Erwin Rd., Apt. 224
Durham, NC 27705

June 13, 2023

The Honorable Jamar K. Walker
United States District Court
600 Granby Street
Norfolk, Virginia 23510

Dear Judge Walker,

I am writing to apply for a clerkship for the 2024-2025 term. I graduated from Duke Law in May of 2023. I will be working at a law firm in Los Angeles until the 2024 term. It would be an honor to clerk for you.

Both as a law student and as an undergraduate student, I have worked to develop my writing and researching skills. At Syracuse University, I wrote several research papers that won department-wide and university-wide awards. As a law student. I worked as a research assistant for three professors and co-wrote an article on legal history for Professor Dan Bowling that he plans to publish. My independent study and Duke's Advanced Legal Research course have also enhanced my research skills. I plan to improve my writing skills this summer by reading several legal writing books.

I have worked in fast-paced and demanding environments, including as a Summer Associate at Bush Gottlieb. In this position, I was part of a live negotiation team with a partner and several associates. We worked collaboratively to integrate our analysis of the economic statements and legal issues into an argument for the client. Through this experience, I gained experience working with a small group of people on a time sensitive legal matter.

Enclosed is my resume, Duke Law transcript, writing sample, and letters of recommendation from Professor Anne Gordon, Ms. Lisa Demidovich, and Professor Dan Bowling. Please contact me if you need any additional information. Thank you for your consideration.

Sincerely,

Hunter Dickerson

HUNTER DICKERSON
2530 Erwin Road, Apt. 224, Durham, NC 27705 | hunter.dickerson@duke.edu | (702) 596-6370

EDUCATION

Duke University School of Law, Durham, NC
Juris Doctor expected, May 2023
GPA: 3.51
Activities: American Constitution Society, National Lawyers Guild, Healthcare Planning Project, Duke Graduate Student Union Law School Solidarity Committee, Fair Chance Project, Movement Lawyering Lab

Syracuse University, Syracuse, NY
Bachelor of Science in Political Science and Communications, *summa cum laude*, June 2018
GPA: 3.9
Awards: May Earle Prize for Outstanding Research Project (2018), Best Political Science Paper Award (2018), Best Academic Paper at SU London (2017), Best Sociology Paper Award (2017), White Denison Speech Competition Finalist (2016)
Internships: U.S. House of Representatives

LAW SCHOOL EXPERIENCE

Bush Gottlieb, Glendale, CA
Summer Associate, May 2022 – August 2022
Drafted positions statements and motions, prepared memos on a variety of legal issues, and attended arbitrations, negotiations, and hearings. Analyzed the ability of a hospital to afford a union contract.

Duke Law Health Justice Clinic, Durham, NC
Certified Law Student, January 2022 – April 2022
Drafted and executed estate planning documents for low income clients. Won a disability benefits case Petitioned for standby guardianship and conducted the hearing where the petition was granted.

American Federation of Teachers, Washington, D.C.
Research and Strategic Initiatives Intern, January 2022 – March 2022
Compiled and summarized AFT resolutions by issue area; researched lawsuits against public pension funds and detailed the allegations; communicated with members about union benefits and concerns.

Professors Daniel Bowling, Anne Gordon, and Michele Okoh, Durham, NC
Research Assistant, May 2021 – August 2021
Reviewed extensive legal scholarship, drafted literature reviews and annotated bibliographies, and formed arguments about the history of race and unions, environmental justice, and de-biasing law school clinics.

PRIOR EXPERIENCE

The Law Office of Roger A. Giuliani, Las Vegas, NV
Paralegal, August 2019 – March 2020
Managed client intake; drafted family court motions; drafted trusts, wills, and deeds for execution.

Black and LoBello, Las Vegas, NV
Paralegal, December 2018 – July 2019
Researched case law, reviewed discovery, and drafted pleadings for a small corporate and divorce firm.

Clark County District Attorney's Office, Las Vegas, NV
Legal Intern and Witness Advocate, March 2018 – August 2018
Prepared subpoenas, drafted discovery requests, and supported witnesses and victims during trial.

ADDITIONAL INFORMATION

Won best attorney at the National Mock Trial competition in high school. Won 'outstanding moot court attorney' at national high school competition. Graduated college in three years while working as a barista.

Hunter Dickerson

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Durham, NC 27705

(702) 596-6370
hunter.dickerson@duke.edu

6052 Cliff View Court
Las Vegas, Nevada 89135

UNOFFICIAL TRANSCRIPT
DUKE UNIVERSITY SCHOOL OF LAW

2020 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Civil Procedure	Sachs, S.	3.1	4.50
Contracts	Richman, B.	3.2	4.50
Torts	Coleman, D.	3.7	4.50
Legal Analysis, Research, Writing	Ragazzo, J.	*Credit Only*	0.00
Professional Development	Multiple	*Credit Only*	1.00

2021 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Constitutional Law	Young, E.	3.2	4.50
Criminal Law	Farahany, N.	3.1	4.50
International Law	Helfer, L.	3.3	3.00
Legal Analysis, Research, Writing	Ragazzo, J.	3.2	4.00

2021 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Property	Richman, B.	3.2	4.00
Adv Con Law: Civil Rights Mvmt	Lovelace, T.	3.5	3.00
Labor Relations Law	Bowling, D.	3.9	3.00
Ethics and the Law of Lawyering	Richardson, A.	3.4	2.00
Law and Governance in China	Qiao, S.	3.9	2.00

2022 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Administrative Law	Benjamin, S.	3.5	3.00
Employment Discrimination	Jones, T.	3.9	3.00

Survey of Immigration Law	Evans, K.	3.8	3.00
Health Justice Clinic	Rice, A.	3.6	5.00
Practitioner's Guide to Labor Law	Bowling, D.	4.0	1.00

2022 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Evidence	Beskind, D.	3.4	4.00
First Amendment	Benjamin, S.	3.8	3.00
Poverty Law	Greene, S.	3.8	3.00
Alternative Dispute Resolution	Thompson, C.	3.6	2.00
Independent Study: Labor History	Bowling, D.	4.3	2.00

2023 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Antitrust	Richman, B.	3.8	4.00
Business Associations	de Fontenay, E.	3.3	4.00
Ad Hoc Tutorial	Gray, K.	Credit	1.00
Movement Lawyering Lab	Gordon, A.	4.0	3.00
Advanced Legal Research	Zhang, A.	3.2	2.00

TOTAL CREDITS: 87.5
CUMULATIVE GPA: 3.51

BUSH GOTTLIEB

David E. Ahdoot
Kathy Amiliategui
Robert A. Bush PE
Adrian R. Butler
Hector De Haro
Lisa C. Demidovich #&
Erica Deutsch
Peter S. Dickinson +
Letizia M. Dorigo
Ira L. Gottlieb *
Julie Gutman Dickinson
Samantha M. Keng

PE Partner Emeritus
~ Also admitted in Hawaii
‡ Also admitted in Montana
* Also admitted in New York
+ Also admitted in Nevada
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Direct Dial: (818) 973-3220
ldemidovich@bushgottlieb.com

April 28, 2023

Re: Hunter Dickerson's Clerkship Reference

To Whom it May Concern:

I am writing to highly recommend Hunter Dickerson for a clerkship position. Hunter was a summer associate with our firm last summer, where he worked on a variety of assignments for public and private sector unions with matters in state and federal court, before administrative agencies, and being arbitrated before neutral labor arbitrators. Hunter worked on assignments in the firm's traditional labor, ERISA, and bankruptcy practice areas.

Hunter came to work every day with a great attitude, eager to take on whatever assignment was brought his way. Hunter is very smart and was accurate, thorough, and efficient with his time on all assignments. Our summer program is designed to be an accurate representation of what it is like to be an associate at Bush Gottlieb so we provide summer associates with real assignments, take them to client meetings and hearings, and invite them to all attorney meetings and gatherings. Because of this integration, we become well acquainted with our summer associates over the 10-week program. Hunter is a very affable person, and he worked well with everyone from partners to support staff and including his fellow summer associates. He also interacted well with clients, and appreciated the opportunity to meet with them even if the meeting occurred after regular business hours. Hunter will be an excellent addition to any chambers.

Hunter is an avid reader in his free time and intellectually curious. Hunter will do well with the court's challenging docket and wide range of subject areas.

I had the privilege of clerking for the Honorable Kim Wardlaw of the U.S. Court of Appeals for the Ninth Circuit. In my experience, the qualities that make someone successful in a clerkship are a willingness to tackle any assignment given, excellent research and writing skills, and an appreciation that there is a lot to learn from the judge and the more senior attorneys appearing before the court. Hunter possesses and exhibits all of those qualities, and you would be fortunate to have Hunter join your chambers next year.

Please feel free to reach out to me with any questions 818-973-3220.

Very truly yours,

Bush Gottlieb
A Law Corporation

Lisa C. Demidovich

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 15, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Hunter Dickerson

Dear Judge Walker:

I have had Hunter Dickerson in two of my courses, Labor Relations Law and Practitioner's Guide to Labor Law. In those classes he made the highest and second highest grades in the class. I have also supervised writing projects for Hunter and am currently working with Hunter on a labor history article. Quite simply, Hunter is one of the top students I have encountered in my 17 years at Duke Law.

Hunter is an active participant in everything he does. He provided valuable insights to classroom discussion without hogging the spotlight. Hunter has a passion for the law and a curious mind. Maybe as important, he is a positive and optimistic person.

As referenced above, Hunter worked for me as a research assistant in the summer of 2021. Hunter researched and drafted an article on the history of race and the labor movement. I gave Hunter the outline of what I wanted to research and what I wanted to say. Hunter turned in a well-cited 25-page article on the history of race and the labor movement with specific examples, statistics and empirical evidence, quotes, and a broader historical analysis. Hunter's draft of the article was a great starting point for our current research and writing project.

Most recently, I served as the faculty supervisor to Hunter's independent study, where he worked on a paper about labor conflict in early 20th century America. Hunter needs very little instruction because he grasps things quickly. This makes it easy to lay out the vision and goals to Hunter and then trust him to deliver a quality product. For example, I asked Hunter to write a brief history on the Pinkertons for use in a video lecture for a class he has already taken. Two days later, Hunter sent me a paper on the history of the Pinkerton Detective Agency and their role in four major strikes. Reliability and consistency are some of his strongest traits, in addition to his fine intellect.

As a practicing lawyer in addition to a professor for over 40 years I am confident that Hunter will be a great lawyer. I am pleased to provide my personal recommendation. If you have any other questions about Hunter, please feel free to contact me at (850) 377-1400 or bowling@law.duke.edu.

Sincerely yours,

Daniel S. Bowling III
Distinguished Fellow

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 13, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Hunter Dickerson

Dear Judge Walker:

My name is Anne Gordon and I am a Clinical Professor of Law at Duke Law School. I would like to strongly recommend my student, Hunter Dickerson, for a clerkship. Hunter and I have worked together since his 1L year, and I know him well enough to confidently say he would be a great addition to any judge's chambers – he is thoughtful, professional, easy to get along with, and a hard worker.

Hunter came to law school with the goal of pursuing labor work, and many of his courses have been geared toward pursuing that goal. He hopes to pursue a clerkship not only to get more exposure to this area of law, but to get an in-depth look at the federal administrative state and the many ways that other areas of law intersect with labor issues.

I first met Hunter when I hired him as a research assistant after his 1L year. Hunter was organized, self-directed, and thorough, always happy to do extra work to make his research more useful to me. He was always responsive to feedback, and patient when the work took unforeseen twists and turns. It is easy to picture him in a judge's chambers, working with co-clerks and going the extra mile to ensure that his judge was organized and well-informed.

Hunter then took my Movement Lawyering Lab class in the Spring of 2023, and he was a standout student, earning a 4.0. Hunter was not the loudest, or the most talkative student, but his comments were always thoughtful – he made a useful contribution to class whenever he spoke. His knowledge of history and philosophy in addition to modern jurisprudence made him my go-to for a "big picture" view of the topics discussed. He was also a creative thinker and strategist, always thinking of different ways to meet our partners' goals.

A good clerk must be confident in their research but willing to listen to others' viewpoints; they must know the law but be willing to think creatively. A good clerk must also have an even-tempered personality and be easy to work with. Hunter has all of these qualities, and more. I highly recommend him for a clerkship and would be happy to answer additional questions.

Sincerely yours,

Anne D. Gordon
Clinical Professor of Law
Director of Externships

Hunter Dickerson
2530 Erwin Road
Durham, NC 27705
(702) 596-6370
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Writing Sample

This is an unedited position statement I wrote as a summer associate at Bush Gottlieb. I have replaced the names of the charging party and the respondent with Charing Party and Respondent. I also removed my employer's information from the document. I have been given express permission to use it as a writing sample.

The position statement responds to a grievance filed by a union member. Respondent is a public sector union in California. Grievances against a public sector union are filed with the Public Employment Relations Board. The citation format of the position statement is in accordance with PERB's rules.

VIA E-FILING

Diana Suarez
Regional Attorney
Public Employment Relations Board
Los Angeles Regional Office
425 W Broadway, Suite 400
Glendale, CA 91204

Re: ***Charging Party v. Respondent,*** **Case No. LA-XX-XXXX-X**
Respondent's Position Statement

Dear Ms. Suarez:

Respondent submits this position statement urging dismissal of the above-referenced charge, which was filed by Charging Party on May 20, 2022. Charging Party appears to allege that Respondent breached its duty of fair representation ("DFR") under section 3544.9 of the Educational Employment Relations Act ("EERA"), and thereby violated section 3543.6(b). As explained below, PERB should dismiss the charge with prejudice for three reasons. First, PERB lacks jurisdiction over the charge's alleged conduct, which concerns a purely internal union dispute. Second, even if PERB is able to assert jurisdiction, the charge fails to state a *prima facie* case of a DFR breach by the Union because it does not allege any conduct rising to the level of being arbitrary, discriminatory, or in bad faith. Third, the charge does not allege facts establishing that the charge was timely filed.

I. The Challenged Conduct is Outside PERB's Jurisdiction

The scope of PERB's jurisdiction is limited to the interpretation and enforcement of collective bargaining legislation relevant to California public-sector employment. GOV'T CODE § 3541.3. PERB can only resolve claims of unfair practices, which are defined as conduct violating the collective bargaining statutes enforced by PERB. (*Los Angeles Unified School District* (1984) PERB Decision No. 448, dismissal ltr., p. 2.) PERB lacks jurisdiction to police internal union affairs. (*California State Employees Association* (1999) PERB Decision No. 1369-S, p. 3 [dismissing allegations that the union conducted elections outside the timeframe required by union bylaws because internal union affairs fall outside PERB jurisdiction]; *California State Employees Association* (1998) PERB Decision No. 1304-S, pp. 2-6 [noting that PERB has traditionally refrained from reviewing the internal affairs of unions].) As PERB declared in *California State Employees Association* (1999) PERB Decision No. 1368-S, at p. 28, "PERB's function is to interpret and administer the statutes which govern the employer-employee relationship, not to police internal relationships among various factions within employee organizations. . . . Internal union disputes are more appropriately presented in a different forum."

To bring internal union affairs within PERB's jurisdiction, a charging party must show that the internal union activities had a substantial impact on charging party's relationship with her employer. (*Service Employees International Union, Local 99 (Kimmett)* (1979) PERB Decision No. 106, p. 10.) PERB has stated, with respect to the duty of fair representation under EERA, that the statute "contains no language indicating that the Legislature intended that section to apply to internal union activities that do not have a substantial impact on the relationships of unit members to their employers." (*Id.*) If the charge does not allege the requisite impact on the employer-employee relationship, then the charging party fails to meet their threshold burden. (*California State Employees Association* (2000) PERB Decision No. 1411-S, p. 23.) The only situations where PERB will intervene in internal union affairs absent a substantial impact on the employer-employee relationship are when a union is alleged to have failed to establish or follow reasonable membership restrictions or disciplinary procedures impacting membership. (*San Jose/Evergreen Federation of Teachers* (2020) PERB Decision No. 2744, p. 18 n.8; *California School Employees Association and its Shasta College Chapter 381* (1983) PERB Decision No. 280, p. 11.) The Charge does not concern either situation.

Here, the Charge alleges conduct that is a part of Respondent's purely internal affairs. Internal union meetings about which school board candidate a union supports and how to organize support for that candidate are outside the scope of PERB's jurisdiction. While Charging Party gives a conclusory allegation, without any factual specificity, that a Respondent officer "tried to coerce and intimidate" her into voting for a certain candidate and did not adequately represent members "by being condescending," the Charge does not meet PERB's precedent for when it will intervene into internal union affairs. (*See California State Employees Association* (1998) PERB Decision No. 1304-S [holding that allegations of abuse and coercion of members did not involve conduct impacting the employment relationship and therefore dismissed the charges].) Furthermore, the Charging Party has not alleged any facts establishing that the officer's alleged conduct had any impact on the employer-employee relationship, nor does she allege that she was subjected to any internal union discipline. Nothing in the narrative of her charge suggests that the employer was involved in any way. Thus, the alleged conduct was entirely an internal union affair and Charging Party has not met her burden of showing an impact on the employer-employee relationship. Therefore, the Charge allegations fall outside PERB's jurisdiction and should be dismissed.

II. The Charge Fails to State a *Prima Facie* Case

A second, independent basis for dismissing the Charge is that it fails to state a *prima facie* case of a DFR breach. PERB Regulation 32615(a)(5) requires that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The charging party faces the burden of alleging with specificity the particular facts giving rise to

a violation. (*City of Roseville* (2016) PERB Decision No. 22505-M, pp. 12-13.) The charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S, warning ltr., p. 2 [citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944].) Mere legal conclusions are not sufficient to state a prima facie case. (*Id.*). A Board agent should issue a complaint only when it can be determined that "the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations." (*Eastside Union School District* (1984) PERB Decision No. 466, p. 6.)

In order to state a *prima facie* DFR violation, Charging Party must show that the conduct of an exclusive representative was arbitrary, discriminatory, or in bad faith. (*Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124, pp. 6-8.) PERB has stated that it is the charging party's burden to show how a union violated its duty of fair representation; it is not the union's burden to show that it properly exercised its discretion. (*United Teachers - Los Angeles (Wyler)* (1993) PERB Decision No. 970, warning ltr., pp. 4-5.) That burden requires the Charging Party to, "at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment." (*United Teachers of Los Angeles (Strygin)* (2010) PERB Decision No. 2149, warning ltr., p. 4 [quoting *Reed District Teachers Association, CTA/NEA* (1983) PERB Decision No. 332, p. 9].) A DFR breach will not be found where the exclusive representative is guilty of "mere negligence or poor judgment." (*Service Employees International Union (Scates) (Pitts)* (1983) PERB Decision No. 341, Order, pp. 910.) An exclusive representative is not expected, nor required, to satisfy all members of the unit it represents. (*California School Employees Association (Chacon)* (1995) PERB Decision No. 1108, warning ltr., p. 3.)

Here, Charging Party fails to meet its burden of establishing a *prima facie* case of a breach of Respondent's DFR. The Charge statement includes conclusions, rather than descriptive facts, about the alleged conduct. The Charge does not state when and where the incident took place, what the meeting was for, who was invited to the meeting, what is meant by "coerce and intimidate" or how it was effectuated, or who was asked to leave the meeting and why. It also does not include a statement of the remedy sought. Nowhere is there a link to Charging Party's employment relationship, or a remedy related to her employment. Charging Party states conclusions of law, but does not allege sufficient facts to support those conclusions. Further, the limited statement that is given does not indicate a DFR violation. While it seems that Charging Party was insulted by the disagreement she had at the meeting, this does not violate the DFR. The allegations do not explain how the union acted arbitrarily, discriminatorily, or in bad faith.

Thus, the Charging Party has not satisfied her burden to establish a *prima facie* DFR violation, and the Charge should be dismissed for this reason as well.

III. The Charge Does Not Allege Sufficient Facts to Determine Timeliness

It is the Charging Party's burden to show that her charge is timely. In order for a complaint to issue, the charging party must allege facts proving that the unfair practice charge was filed within the statute of limitations period. (*Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072, 1086-91; *Los Angeles Unified School District* (2007) PERB Decision No. 1929, p. 6; *City of Santa Barbara* (2004) PERB Decision No.1628-M, warning ltr., p. 2.) Both EERA itself and PERB Regulation 32615(a) require the charging party to allege the date that the unfair practice occurred. (*San Francisco Unified School District* (1985) PERB Decision No. 501, pp. 5-6; *see also Long Beach Council of Employees* (2009) PERB Decision No. 2002, pp. 6-7, 10-11.)

Here, the Charging Party does not meet her burden. There is no reference in the Charge to when the alleged unfair practice occurred. Without these allegations, the Board cannot determine whether the charge is timely and, therefore cannot issue a complaint.[1]

Conclusion

As the foregoing discussion shows, the Charge is subject to dismissal because (1) the allegations concern a purely internal union dispute over which PERB lacks jurisdiction; (2) the allegations do not state a *prima facie* case of a DFR breach; and (3) the allegations do not establish that the charge was timely filed. Additionally, because Respondent's conduct alleged in the charge was not of a kind to give rise to a DFR breach, any opportunity to amend of the Charge would be futile as it would remain outside of PERB's jurisdiction, and the charge should be dismissed with prejudice.

Verification

This response is true and complete to the best my knowledge and belief and is signed under penalty of perjury.

Respectfully,

[1] Even if Charging Party could amend her charge to allege facts establishing timeliness, amendment should not be allowed, because the charge clearly focuses on an internal union dispute over which PERB has no jurisdiction, and on union conduct which does not meet the standard to violate the duty of fair representation.

821216v2

Applicant Details

First Name	**Sophia**
Middle Initial	**I**
Last Name	**Dillon-Davidson**
Citizenship Status	**U. S. Citizen**
Email Address	**sophiadd12@gmail.com**
Address	**Address** Street **67 S Mt Holyoke Dr** City **Amherst** State/Territory **Massachusetts** Zip **01002**
Contact Phone Number	**4138351516**

Applicant Education

BA/BS From	**Wellesley College**
Date of BA/BS	**May 2018**
JD/LLB From	**The University of Michigan Law School** **http://www.law.umich.edu/currentstudents/careerservices**
Date of JD/LLB	**May 6, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Michigan Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Moran, David
morand@umich.edu
734-615-5419
Santarosa, Veronica
aokisan@umich.edu
734-764-7335
Bromberg, Howard
hbromber@umich.edu
734-764-5564

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Sophia Dillon-Davidson
67 S. Mt. Holyoke Dr.
Amherst, Massachusetts 01002
(413) 835-1516
sdillond@umich.edu

June 12, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
Walter E. Hoffman U.S. Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year student at the University of Michigan Law School and I am applying for a clerkship in your chambers for the 2024-2025 term or the next available term.

I have attached my resume, transcript, and a writing sample for your review. I have also attached letters of recommendation from the following professors and supervisors:

- Professor Howard Bromberg: hbromber@umich.edu, (734) 764-5564
- Professor David A. Moran: morand@umich.edu, (734) 615-5419
- Professor Veronica Santarosa: aokisan@umich.edu, (734) 764-7335

Thank you for your consideration.

Respectfully,

Sophia Dillon-Davidson

Sophia Dillon-Davidson

67 S. Mt. Holyoke Dr., Amherst, Massachusetts 01002
(413) 835-1516 • sdillond@umich.edu

EDUCATION

UNIVERSITY OF MICHIGAN LAW SCHOOL — Ann Arbor, MI
Juris Doctor GPA: 3.877 (historically top 10%) — Expected May 2024
Journal: Michigan Law Review, *Senior Editor*
Honors: Dean's Scholarship
Best Appellate Brief, Section E

WELLESLEY COLLEGE — Wellesley, MA
Bachelor of Arts in Economics — June 2018
Activities: Wellesley College Varsity Swim Team

EXPERIENCE

SIMPSON THACHER & BARTLETT — Washington, D.C.
Summer Associate — May – July 2023

MICHIGAN INNOCENCE CLINIC — Ann Arbor, MI
Student Attorney — May – July 2022

- Drafted memoranda summarizing information in trial transcripts and FOIA documentation.
- Researched and drafted a motion to request a refund of court fees paid by an exonerated client and a reply brief countering the prosecution's response to a 6.500 Motion for Relief from Judgment.
- Communicated with clients and expert witnesses and helped conduct investigations into claims of innocence.

HORST FRISCH, INC. — Washington, D.C.
Analyst — August 2018 – July 2021

- Gathered and analyzed financial data for transfer pricing and international tax matters for clients including multinational corporations and tax authorities.
- Assisted in writing, editing, and checking expert witness reports for transfer pricing litigation.
- Assisted with research on the effects of the 2017 Tax Cuts and Jobs Act on companies' effective tax rates. Results of this research published in the May 27, 2019 and July 29, 2019 editions of *Tax Notes International*.

WELLESLEY COLLEGE OFFICE OF INSTITUTIONAL RESEARCH — Wellesley, MA
Research Assistant — September 2017 – May 2018

- Analyzed and cleaned quantitative data using SPSS and Excel to evaluate the needs and satisfaction of students and alumnae to help direct institutional decision-making.
- Created tables, graphs, and infographics along with written summaries to illustrate and highlight results.

VENTUREWELL — Hadley, MA
Research and Evaluation Intern — January – March 2017

- Performed quantitative and qualitative data analysis to evaluate the effectiveness of VentureWell's programs.
- Assisted in writing and editing the annual report of a program evaluating the progress of innovations and teams participating in the program and the effectiveness of instructors.

ADDITIONAL

Languages: German (intermediate)
Interests: Swimming, playing cello

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The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Dillon-Davidson,Sophia
Student#: 17796780

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Fall 2021	**(August 30, 2021 To December 17, 2021)**							
LAW	510	001	Civil Procedure	Nicholas Bagley	4.00	4.00	4.00	A-
LAW	520	001	Contracts	John Pottow	4.00	4.00	4.00	A-
LAW	580	001	Torts	Roseanna Sommers	4.00	4.00	4.00	A-
LAW	593	001	Legal Practice Skills I	Howard Bromberg	2.00		2.00	H
LAW	598	001	Legal Pract:Writing & Analysis	Howard Bromberg	1.00		1.00	H
Term Total				**GPA: 3.700**	**15.00**	**12.00**	**15.00**	
Cumulative Total				**GPA: 3.700**		**12.00**	**15.00**	
Winter 2022	**(January 12, 2022 To May 05, 2022)**							
LAW	530	001	Criminal Law	Barbara Mcquade	4.00	4.00	4.00	A-
LAW	540	002	Introduction to Constitutional Law	Evan Caminker	4.00	4.00	4.00	A
LAW	594	001	Legal Practice Skills II	Howard Bromberg	2.00		2.00	H
LAW	664	001	European Union Law	Thomas Verellen	3.00	3.00	3.00	A+
Term Total				**GPA: 3.972**	**13.00**	**11.00**	**13.00**	
Cumulative Total				**GPA: 3.830**		**23.00**	**28.00**	
Fall 2022	**(August 29, 2022 To December 16, 2022)**							
LAW	536	001	Nat'l Security & Civ Liberties	Barbara Mcquade	3.00	3.00	3.00	B+
LAW	560	001	Property	Thomas Gallanis Jr	4.00	4.00	4.00	A
LAW	678	001	International Finance	Veronica Santarosa	4.00	4.00	4.00	A
LAW	828	001	Social Justice and the Law	Michelle Crockett	2.00	2.00	2.00	A
Term Total				**GPA: 3.838**	**13.00**	**13.00**	**13.00**	
Cumulative Total				**GPA: 3.833**		**36.00**	**41.00**	

Continued next page >

Control No: E196664901 Issue Date: 05/30/2023 Page 2

The University of Michigan Law School

Cumulative Grade Report and Academic Record

Name: Dillon-Davidson,Sophia
Student#: 17796780

University Registrar

Subject	Course Number	Section Number	Course Title	Instructor	Load Hours	Graded Hours	Credit Towards Program	Grade
Winter 2023	**(January 11, 2023 To May 04, 2023)**							
LAW	669	002	Evidence	Len Niehoff	4.00	4.00	4.00	A
LAW	776	001	Financ Mkts: Reg, Pol'y &Trans	Veronica Santarosa	4.00	4.00	4.00	A
LAW	797	001	Model Rules and Beyond	Bob Hirshon	3.00	3.00	3.00	A
LAW	861	001	Law and Economics Workshop	JJ Prescott	2.00	2.00	2.00	A
LAW	885	005	Mini-Seminar Short Stories / Life in (the Shadow of) the Law	Steven Schaus	1.00		1.00	S
Term Total				**GPA: 4.000**	**14.00**	**13.00**	**14.00**	
Cumulative Total				**GPA: 3.877**	**49.00**		**55.00**	
Fall 2023	**(August 28, 2023 To December 15, 2023)**							
Elections as of:	05/30/2023							
LAW	644	001	Intro to Inc Tax of Business	Reuven Avi-Yonah	3.00			
LAW	677	001	Federal Courts	Gil Seinfeld	4.00			
LAW	976	001	Michigan Innocence Clinic	David Moran Elizabeth Cole Imran Syed	4.00			
LAW	977	001	Michigan Innocence Clinic Sem	David Moran Elizabeth Cole Imran Syed	3.00			

End of Transcript
Total Number of Pages 2

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University of Michigan Law School Grading System

Honor Points or Definitions

Through Winter Term 1993		Beginning Summer Term 1993	
A+	4.5	A+	4.3
A	4.0	A	4.0
B+	3.5	A-	3.7
B	3.0	B+	3.3
C+	2.5	B	3.0
C	2.0	B-	2.7
D+	1.5	C+	2.3
D	1.0	C	2.0
E	0	C-	1.7
		D+	1.3
		D	1.0
		E	0

Other Grades:

F Fail.

H Top 15% of students in the Legal Practice courses for students who matriculated from Spring/Summer 1996 through Fall 2003. Top 20% of students in the Legal Practice courses for students who matriculated in Spring/Summer 2004 and thereafter. For students who matriculated from Spring/Summer 2005 through Fall 2015, "H" is not an option for LAW 592 Legal Practice Skills.

I Incomplete.

P Pass when student has elected the limited grade option.*

PS Pass.

S Pass when course is required to be graded on a limited grade basis or, beginning Summer 1993, when a student chooses to take a non-law course on a limited grade basis.* For SJD students who matriculated in Fall 2016 and thereafter, "S" represents satisfactory progress in the SJD program. (Grades not assigned for LAW 970 SJD Research prior to Fall 2016.)

T Mandatory pass when student is transferring to U of M Law School.

W Withdrew from course.

Y Final grade has not been assigned.

* A student who earns a grade equivalent to C or better is given a P or S, except that in clinical courses beginning in the Fall Term 1993 a student must earn a grade equivalent to a C+ or better to be given the S.

MACL Program: HP (High Pass), PS (Pass), LP (Low Pass), F (Fail)

Non-Law Courses: Grades for these courses are not factored into the grade point average of law students. Most programs have customary grades such as A, A-, B+, etc. The School of Business Administration, however, uses the following guides: EX (Excellent), GD (Good), PS (Pass), LP (Low Pass) and F (Fail).

Third Party Recipients

As a third party recipient of this transcript, you, your agents or employees are obligated by the Family Rights and Privacy Act of 1974 not to release this information to any other third party without the written consent of the student named on this Cumulative Grade Report and Academic Record.

Official Copies

An official copy of a student's University of Michigan Law School Cumulative Grade Report and Academic Record is printed on a special security paper with a blue background and the seal of the University of Michigan. A raised seal is not required. A black and white is not an original. Any alteration or modification of this record or any copy thereof may constitute a felony and/or lead to student disciplinary sanctions.

The work reported on the reverse side of this transcript reflects work undertaken for credit as a University of Michigan law student. If the student attended other schools or colleges at the University of Michigan, a separate transcript may be requested from the University of Michigan, Office of the Registrar, Ann Arbor, Michigan 48109-1382.

Any questions concerning this transcript should be addressed to:

Office of Student Records
University of Michigan Law School
625 South State Street
Ann Arbor, Michigan 48109-1215
(734) 763-6499

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to recommend, very enthusiastically, Sophia Dillon-Davidson for a clerkship in your chambers. I came to know Sophia very well last summer (2022) when I hired her as a full-time student-attorney in the Michigan Innocence Clinic, a non-DNA innocence project I direct at the University of Michigan Law School. Since we have only six students working in the Clinic over the summer, I get to know each of them very well, and I had the chance to review a great deal of Sophia's work.

Of the roughly 60 summer interns we've had in the Clinic over the past decade, Sophia was certainly one of the ten best. She wrote numerous memos, and I found her research and writing to be clear and concise.

In particular, Sophia wrote the first draft of a reply brief we filed in an extremely high profile post-conviction case involving claims of new scientific developments discrediting the forensic evidence the State presented at trial. Sophia's draft was so good that we had to edit it only minimally before filing. Sophia also spent a good deal of time meeting with and advising the client in that case. The client really came to trust Sophia over the course of the summer. I would characterize Sophia's work on that case, and others, as superb.

Sophia is a very friendly and thoughtful person, and her peers in the Clinic found her to be a pleasure to work with. So did I.

I should add that Sophia's performance last summer is no aberration. Her current grade point average indicates that she is well on her way to graduate with high honors, and she is a senior editor at the Michigan Law Review. She is, in short, an excellent student.

In sum, I believe Sophia would make an excellent clerk for any judge fortunate enough to hire her. Please do not hesitate to contact me, as I would be happy to answer any questions you may have.

Sincerely,

David A. Moran

David Moran - morand@umich.edu - 734-615-5419

UNIVERSITY OF MICHIGAN LAW SCHOOL
625 South State Street
Ann Arbor, Michigan 48109

VERONICA AOKI SANTAROSA
Professor of Law

June 12, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am very pleased to supply a reference for Sophia Dillon-Davidson in connection with her application for a judicial clerkship in your chambers. Sophia is an extraordinary student and a stellar candidate to a top clerkship, and I am pleased to give her my highest recommendation.

I got to know Sophia when she was a student in my International Finance class during the fall of 2022 and in my Financial Regulation class this term. Among two very strong groups of students, she was a stand-out in every respect: analytically powerful, a clear writer, someone with a speculative turn of mind and with real intellectual initiative. Sophia is probably among the top 10 students I have taught in my 12 years at Michigan.

In both courses, Sophia excelled in class participation, in the final exam, and in the course project. During the course, we addressed a number of complex legal and economic matters and Sophia's contributions to class discussions were always substantial. She had a solid grasp of the market practices and the regulatory constraints, combined with an unusually sophisticated ability to weave statutory and case law interpretation with policy-oriented perspectives. Even though she had a quiet presence in the classroom and spoke mostly only when called on, when she spoke her classmates listened – they did so because her comments were thoughtful and challenged the conventional thinking. If I had a complex question, I knew I could always count on Sophia for an intelligent and insightful answer.

In my encounters with her outside of class, I have also found her to be intellectually curious, well read, and professional. I can attest that her understanding of financial regulation went well beyond the class' demands. However, what really distinguished her from many of her peers was her willingness to try on unorthodox ideas and at the same time take on extra responsibilities, not just to push or test herself, but to make sure she gets it right. Every time she found something that she did not know or did not understand, she immediately went to work—reading, researching, and immersing herself in the problem until she had mastered it.

Her written work for both courses displayed all of these qualities and was second only to that of a student who had spent multiple years in Wall Street before starting law school. The clarity, logic and rigor of her legal analysis in the exam, which was written under intense time pressure, was simply outstanding. Sophia writes with a verve, precision, and an intellectual curiosity that I think would be an asset to any judicial chambers.

For the course project, Sophia explored the challenges and opportunities of cryptocurrencies and governments' regulatory responses, which she presented in class. I was impressed by how quickly she immersed herself in and mastered the technical intricacies of this innovation, as well as how nimbly she drew analogies to existing legal categories in an effort to fit crypto into the regulatory perimeter. She conveyed her ideas clearly and grappled with abstract legal and economic concepts, identifying possible gaps in the current regulatory framework, and she was able to respond effectively to counter-arguments to her position. While Sophia required little direction and essentially worked independently, she sought advice when appropriate and took feedback willingly. It was a delight to support her in honing her research skills and extremely gratifying to listen to her thoroughly researched and persuasive final presentation.

Sophia is a strong and careful thinker, a clear writer, and a dedicated person. I regard her as a credit to Michigan. I am fully confident that she will be an excellent lawyer and a first-rate judicial clerk. Her enthusiasm, intelligence, and strong work ethic, combined with a pleasant sense of humor, makes her a great person to have around the office. If I could possibly answer any questions or add anything else, I would be delighted to do so.

Sincerely,

Veronica Aoki Santarosa
Professor of Law

(734) 764-7335
aokisan@umich.edu

Veronica Santarosa - aokisan@umich.edu - 734-764-7335

UNIVERSITY OF MICHIGAN LAW
Legal Practice Program
801 Monroe Street, 945 Legal Research
Ann Arbor, Michigan 48109-1210

Howard Bromberg
Clinical Professor of Law

June 11, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I recommend Sophia Dillon-Davidson for a judicial clerkship with your office. Sophia was a student in my Legal Practice course at the University of Michigan Law School in the 2021-22 academic year. Legal Practice is a year-long course which teaches first year law students the basics of legal research and writing. As part of the course, students write two memorandums, a motion, and an appellate brief on various legal issues.

As a student, Sophia impressed me with her academic abilities. She was one of the best I taught in the 2021-22 academic year. She is an excellent writer and received high marks on her memoranda and briefs. As a result, she earned one of the few Honors grades that I give out. She particularly impressed me with her final appellate brief, which was perhaps the best in the class.

For these reasons I invited her to be a research assistant on several of my research projects. She did excellent work as my research assistant. Her work was always meticulous, conscientious, and well-conceived.

Sophia is a dedicated, personable law student. She is a senior editor of the Michigan Law Review. She is also a talented cello player.

I recommend her extremely highly for a clerkship with your chambers.

Sincerely,

/Howard Bromberg/

Howard Bromberg
Clinical Professor of Law

Sophia Dillon-Davidson

67 S. Mt. Holyoke Dr., Amherst, Massachusetts 01002
(413) 835-1516 • sdillond@umich.edu

Writing Sample

I prepared this reply brief during the summer of 2022 while working as a student attorney at the Michigan Innocence Clinic. I have permission to use this as a writing sample. This draft reflects light editing from my supervisor.

INTRODUCTION

The prosecution's response brief reflects a misunderstanding of several key points from Ms. Boes's Motion for Relief from Judgment. This reply will address a few of these points below, but the main issue before the Court at this stage is simple: Ms. Boes has made a sufficient showing to obtain an evidentiary hearing. As explained below and in Ms. Boes's 6.500 motion, there have been advances in the fields of fire science and false confessions that constitute new evidence. Further, the fact that the prosecution's lead fire expert at trial has subsequently been discredited for shading his testimony to favor the prosecution is unquestionably new evidence. Therefore, this Court should convene an evidentiary hearing to build a record on the claims presented.

I. The Prosecution's Experts Used Negative Corpus and Negative Corpus Remains Disavowed in *NFPA 921*.

As discussed in Ms. Boes's 6.500 motion and in Mr. Lentini's report (App. A to 6.500 Mot.), there have been significant changes in fire science since Ms. Boes's trial in 2003 and her first 6.500 motion in 2006. At Ms. Boes's trial the prosecution's experts, John DeHaan and Michael Marquardt, relied on the use of negative corpus to conclude that the fire must have started in the hallway. Lentini Report at 10-16. It was not until the 2011 version of *NFPA 921* that the fire science community unequivocally rejected negative corpus. App. D to 6.500 Mot.; *see also* Lentini Report at 8–10 (discussing the changes to *NFPA 921*). This rejection remains in the 2021 version of *NFPA 921*. *NFPA 921* §19.6.5 (2021).

The prosecution claims that the current version of *NFPA 921* (issued in 2021) allows for negative corpus (Prosecution Resp. at 23), but the prosecution *just used ellipses to edit out language disavowing negative corpus.* The 2021 version of *NFPA 921* actually states:

> **The negative corpus process is not consistent with the scientific method, is inappropriate, and should not be used because it generates untestable hypotheses and may result in incorrect determinations of the ignition source and first fuel ignited.**

> Any hypotheses formulated for the causal factors (e.g., first fuel, ignition source, and ignition sequence) must be based on the analysis of facts and logical inferences that flow from those facts." §19.6.5 (emphasis added).

There is no question, then, that negative corpus remains firmly rejected by the fire science community. This scientific change occurred in 2011 after both Ms. Boes's trial and first 6.500 motion, and it now undermines the prosecution experts' ultimate conclusions in this case.

The prosecution further contends that their experts did not use negative corpus to deduce that the fire must have been ignited in the hallway using an accelerant, despite the lack of any actual evidence to support that theory that does not rely on the use of negative corpus. Prosecution Resp. at 24-27. As discussed in detail in Mr. Lentini's report, both DeHaan and Marquardt did indeed use negative corpus to reach this conclusion. DeHaan testified at trial that the intense fire damage in the east end of the hallway led him to look for "a fuel source that would drive a big enough fire to accomplish that damage." Trial Tr. vol. 7 at 1133–34. He further testified that he was unable to find any evidence of such a fuel source and "the only thing [he] could identify that would create that kind of intense fire at that location would be a flammable liquid that ends up getting burned away substantially during the fire." *Id.* at 1134.

But no liquid accelerant was detected in chemical testing performed on samples taken from the hallway, even though there was liquid accelerant detected in the bedroom. *Id*. at 1151. So DeHaan concluded: "**All the other options have been explored and eliminated, and the only thing I am left with is the presence of a flammable liquid at the east end of the hallway**." *Id.* at 1151–52 (emphasis added). DeHaan's conclusion that there must have been flammable liquid in the hallway, despite no actual evidence of its presence, is a classic example of negative corpus. Lentini Report at 11. Marquardt used a similar line of reasoning and testified that he believed that "there [wa]s not sufficient fuel load to cause" the amount of burn damage that was present in the

hallway, and therefore that "an ignitable liquid had to be added to that area." Trial Tr. vol. 4 at 713. Again, that is a perfect example of negative corpus reasoning.

The prosecution attempts to show that Marquardt did not rely on negative corpus by detailing all the steps he took to reach his conclusion. Prosecution Resp. at 24-26. However, all of the steps listed serve only to prove that he did in fact rely on negative corpus. The prosecution is unable to point to a single piece of evidence that affirmatively supports Marquardt's theory that the fire started in the hall. *Id.* Rather, Marquardt's investigation only yielded **a lack of evidence**. He relied entirely on his **inability** to find an ignition source in the bedroom to conclude that the fire must have started in the hallway.

When Marquardt presented this theory at Ms. Boes's trial in 2003, it was acceptable to opine that because he was unable to find a source of ignition in one area, the fire must have originated in a different area where he **also could not find any source of ignition**. But that kind of reasoning has not been acceptable since 2011, and it is not acceptable now. An evidentiary hearing is necessary to further clarify that the prosecution's experts relied on a now discredited methodology when concluding that the fire started in the hallway.

Ms. Boes does not contest that the process of elimination is an integral part of the scientific method, and its use is valid in some situations. This, however, is not one of those situations. In order to properly use the process of elimination, there must first be a testable hypothesis. Lentini Report at 8-9. Because it is impossible to test the prosecution's theory that no liquid accelerant was found in the hallway because it burned away, DeHaan's and Marquardt's reasoning is now invalid. *Id.*

Further, since 2008 the NFPA has required that evidence must be *uniquely* consistent with a specific origin. Lentini Report at 12. If the origin of the fire is not correctly identified, any

subsequent cause determination will also be incorrect. *NFPA 921* §18.1 (2021). It is therefore especially concerning when, as is the case here, investigators utilize negative corpus when there is no origin that is uniquely consistent with the evidence. Even if the evidence were consistent with the fire starting in the hallway, it is also entirely consistent with the fire starting in the bedroom, a fact acknowledged by Marquardt. Trial Tr. vol. 4 at 630. This is the exact type of situation that would be most concerning to the fire science community, not as the prosecution contends, the type of situation that would lend itself to an acceptable use of process of elimination. An evidentiary hearing is necessary to further detail why the process of elimination is not valid in this case.

II. DeHaan and Marquardt Did Not Properly Account for Ventilation When They Concluded That the Fire Started in the Hallway.

The prosecution experts at trial relied on the lowest and deepest char to determine the origin of the fire, a practice that was not known to produce inaccurate results in 2003 or in 2006. Since 2006, the use of the lowest and deepest char as a conclusory method to determine a fire's origin has been invalidated. Lentini Report at 4. Although the effects of ventilation on fire have been studied for many years, it was not until the Carman paper was published in 2008 that the fire science community began to understand that ventilation-generated patterns could mislead fire investigators and result in an incorrect origin determination. Ex. A. After Carman's paper was published in 2008, it became accepted in the fire science community that using the lowest and deepest char to determine the origin is an unreliable method of fire investigation because it fails to account for ventilation at the location of the fire. Lentini Report at 4–6.

The prosecution argues that neither Marquardt nor DeHaan relied on the deepest and lowest char method to determine the fire's origin. Prosecution Resp. at 28-30. This is incorrect. Both Marquardt and DeHaan erroneously used this methodology to determine that the fire originated in the hallway. Lentini Report at 14-16. Marquardt and DeHaan relied on the intense burn patterns

on the bedroom door and adjacent surfaces to conclude that the fire must have started outside the bedroom in the hallway. *Id*. Changes in fire science now prove that such a conclusion is unreliable. *Id.* at 7.

While fire pattern analysis remains an accepted part of fire investigations, the accepted interpretation of fire patterns has shifted significantly since 2006. *Id.* at 4. It is not enough that a fire investigator considers if a fire had sufficient oxygen, they must also know that fully involved fires will often only persist at the sources of ventilation, causing deep chars that can be mistaken for the origin. The prosecution's experts did not account for this when concluding that the fire must have started in the hallway on the basis of the significant fire damage they observed there. *Id.* at 14-16. Although both of the prosecution's experts mentioned ventilation in their testimony, it was not in the context of how ventilation would impact the fire patterns in the result of a flashover. Trial Tr. vol. 4 at 87, 180-81; DeHaan Report at 11. Rather, both experts explained how the ventilation conditions as they believed them to be could create a fire that was entirely consistent with the evidence, which, as discussed above, is no longer sufficient. An evidentiary hearing would allow Ms. Boes to present additional evidence explaining that the ventilation considerations that the prosecution mentions are not the same considerations that have driven a change in fire science since 2006.

That Marquardt was a trainer in an exercise in 2005 does not mean that he was aware that ventilation-generated patterns could mislead fire investigators when he testified in 2003. The prosecution offers no evidence that Marquardt was aware of the pitfalls of relying on the lowest and deepest char to determine the origin of the fire at the time of Ms. Boes's trial. Further, while Marquardt participated in the study as a trainer, he was not a co-author of Carman's paper. Steven Carman, *Improving the Understanding of Post-Flashover Fire Behavior*, INT'L SYMP. ON FIRE

INVESTIGATIONS SCI. AND TECH. (2008). It was not until Carman's study was published in 2008 that it became clear that post-flashover ventilation could result in misleading patterns. Marquardt's participation as a trainer is not indicative of any understanding of *why* only 5.7% of "the most experienced fire investigators" could accurately determine the origin of the fire, only that he may have known this was an area in which fire investigators were seriously lacking. *Id*.

Once again, an evidentiary hearing is necessary so that the experts can explain how the fire science has changed since 2006 and how those changes impact this case.

III. DeHaan's Discreditation Creates a Reasonable Possibility of a Different Outcome.

The prosecution cannot deny that John DeHaan has been discredited for shading his testimony to favor the prosecution in another case very near in time to his involvement in Ms. Boes's case. That discreditation, standing alone, requires a new trial. Contrary to the statements of the prosecution, Ms. Boes does not have to show that the absence of DeHaan's testimony would have been "fatal" to the prosecution's case. Prosecution Resp. at 35. She merely needs to show that there is a reasonable probability of a different outcome at retrial. *People v. Cress*, 468 Mich. 678, 692 (2003). At trial, the prosecution heavily relied on DeHaan's testimony and credentials to secure a guilty verdict. His discreditation therefore creates a reasonable possibility of a different outcome at retrial.

As discussed in Ms. Boes's 6.500 motion, the AAFS recommended that DeHaan be expelled from the AAFS after finding that DeHaan had committed professional misconduct. This misconduct included "[DeHaan's] misleading testimony in the *Gutweiler* case and his failure to later correct his testimony, **his subservience to the wishes of the prosecutors regarding the contents of his reports, and his conclusions in one of his reports that were not based on sound science.**" 6.500 Mot. at 1 (emphasis added). The AAFS Committee's finding that DeHaan

subordinated his own judgment to that of the prosecutor destroys his reliability. On retrial, defense counsel would have a compelling basis for cross-examining DeHaan about how his relationships with prosecutors affect his conclusions in a case.

Although the prosecution now tries to downplay DeHaan's role in Ms. Boes's conviction, it relied heavily at trial on Dehaan's testimony and frequently stressed his seemingly impressive credentials, including his position as a fellow for the AAFS. Trial Tr. vol. 7 at 1107. Further, when the prosecution presented DeHaan's conclusion that the fire started in the hallway, they stated that DeHaan is "the guy who wrote the book" when it comes to fire investigation. *Id*. at 2177.

The prosecution cites "strong" supporting evidence of Ms. Boes's guilt for why it believes there is not a reasonable probability of a different outcome. Prosecution Resp. at 36. But the prosecution neglects to acknowledge that much of this evidence was only considered "strong" at trial because it was supported by the testimony of a distinguished expert in the field ("the guy who wrote the book"). DeHaan's discreditation significantly damages the strength of the prosecution's other evidence, including Marquardt's testimony. Despite the prosecution's insistence otherwise, one expert *is* less credible than two, especially when "the guy who wrote the book" is no longer one of the two. With only Marquardt's testimony, the jury would be left to compare the credibility of Marquardt and the defense expert at Ms. Boes' original trial. It is a much tighter call when the prosecution is left with only the testimony of a mid-level ATF agent who at the time was seemingly much less impressive than DeHaan. Further, as discussed above and below, the evidence which is not weakened by DeHaan's discreditation has been discredited by the changes in fire science and the science of false confessions since 2006.

IV. There Have Been Developments in False Confession Research that Call into Question the Reliability of Ms. Boes's "Confession."

Dr. DeLisi is completely unqualified to testify to the changes in the science of false confessions. His testimony would not be admissible at trial and should not be seriously considered. Dr. DeLisi has not published a single article on the topic of false confessions, nor has he ever provided any testimony on the subject. Prosecution Ex. T. Not even the prosecution claims that Dr. DeLisi is an expert in false confessions. Rather, they assert that he is qualified to opine on the changes in the science of false confessions, the risks of interrogations, and the REID technique because he "follows" the research despite having done no research of his own. Prosecution Resp. at 39. Dr. DeLisi's assertions in his report are frequently incorrect and misrepresent the findings of research, an unsurprising result of opining on a topic on which he is not an expert.

Dr. DeLisi misrepresents the findings of studies and Ms. Boes's behavior on multiple occasions. For example, Dr. Delisi asserts that Ms. Boes used neutralization during her interrogation and displayed behavioral signs of an increased cognitive load consistent with deception. DeLisi Report at 18. However, he does not mention that there is another cause of increased cognitive load: internalized confessions. G.H. Gudjohnsson et al, *The Role of Memory Distrust in Cases of Internalized False Confession*, 28 APPLIED COGNITIVE PSYCHOLOGY 340 (2014). Ms. Boes's behavior is consistent with that of an innocent person being fed misleading information. Further, Dr. DeLisi claims that recent research undermines the claim that an accusatory environment can contribute to false confessions. DeLisi Report at 25. However, the study he cites actually concludes that accusatorial interrogations may not be worth it given the "well documented risk of false confessions associated with common accusatory interrogation techniques." Haley Cleary & Ray Bull, *Contextual Factors Predict Self-Reported Confession*

Decision-Making: A Field Study of Suspects' Actual Police Interrogation Experiences, LAW & HUM. BEHAV. 320 (2021).

The prosecution claims that Ms. Boes lacks the vulnerability traits required for an internalized false confession. This alone is false, but it also misstates false confession research. While traits may make a subject more vulnerable to giving a false confession, **this does not exclude the possibility of false confessions absent any vulnerabilities.** Gudjohnsson, *supra* at 340. However, as explained in Ms. Boes's 6.500 motion and Mr. Trainum's report, Ms. Boes did indeed exhibit signs of memory distrust, suggestibility, trust of police, and trying to please investigators. Her statements are entirely consistent with an internalized false confession. Further, memory distrust does not require that Ms. Boes distrust every detail from that morning, nor is it surprising that Ms. Boes did not question her memory immediately. Incorporating details from external sources into personal recollection is a known potential trigger for memory distrust. *Id.* at 337.

There have been significant developments in the science of false confessions since 2006. As discussed in Mr. Trainum's report, there was no consensus in the field of false confession research in 2006. However, the research on interrogation practices and false confessions conducted since 2006 has led to a greater understanding of how certain interrogation tactics can result in false confessions and has resulted in a shift in the legal and scientific consensus. Trainum Report at 1-2. For example, research published in 2007 demonstrates how police interrogation practices used against Ms. Boes can lead to internalized false confessions. *See* Trainum Report at 3, 127–31. Additionally, in 2010 the American Psychological Association's AP-LS published a Scientific Review paper discussing the consensus view of its members regarding the risk factors that can lead to false confessions, including lengthy interrogations,

presentations of false evidence, and implied promises of leniency – all of which are present in this case. These studies and newfound consensus have led to significant changes in how law enforcement and courts treat false confessions. Since the APA came to a consensus in 2010 the Reid Institute removed the sentence that questioned the validity of cases involving claims of false confessions and in 2011 the United States Supreme Court recognized that, a "**frighteningly high percentage of people [can be induced to] confess to crimes they never committed**." *J.D.B. v. North Carolina*, 564 U.S. 261, 269 (2011) (emphasis added; quotation marks and citation omitted). An evidentiary hearing is necessary so that experts can explain how false confession science has changed since 2006.

Mr. Trainum's conclusions are based on scientifically valid and peer reviewed studies. The prosecution claims that some of the research cited by Mr. Trainum is not ecologically valid and therefore should not be considered. Ms. Boes does not contend that these studies perfectly mirror the conditions of the interrogation of a murder suspect. Any study that did match these conditions would unethical. Gudjohnsson, *supra* at 338. However, this does not mean that these studies are invalid. Actual false confession experts agree that although there are limitations, "laboratory studies into false confessions greatly assist with understanding the conditions under which memory distrust is elicited." *Id.* As Dr. DeLisi himself argues, it is sometimes appropriate to draw conclusions about human behavior in high stakes situations from studies conducted in low stakes environments. DeLisi Report at 17-18.

The prosecution acknowledges that there is ecologically valid post-2006 research on factors that lead to contamination that can result in false confessions during the interrogation process. *Id.* at 11. However, they argue that this is not relevant because there is no evidence of contamination in this case. This is false. There is clear evidence that contamination and

confirmation bias influenced Ms. Boes's statements and the interpretation of her statements. Trainum Report at 119. Investigators contaminated Ms. Boes's "confession" by supplying her with details about the crime to include in her confession such as that Ms. Boes saw the gasoline can in Robin's room, spread the gasoline around the room, and lit the candle which she then incorporated into her statements. *Id.*

An evidentiary hearing is necessary to further clarify that Ms. Boes's behavior and statements are consistent with an internalized false confession and that, in fact, the shifts in scientific understanding since 2006 constitute new evidence within the meaning of MCR 6.502(G).

Applicant Details

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Applicant Education

BA/BS From	**Tufts University**
Date of BA/BS	**May 2019**
JD/LLB From	**The George Washington University Law School** **https://www.law.gwu.edu/**
Date of JD/LLB	**May 15, 2024**
Class Rank	**15%**
Law Review/Journal	**Yes**
Journal(s)	**The George Washington Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**George Washington Moot Court Board**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 21, 2023

The Honorable Jamar K. Walker
United States District Court for the Eastern District of Virginia
600 Granby Street,
Norfolk, VA 23510

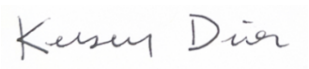
Dear Judge Walker,

I am third-year student at the George Washington University Law School and an Articles Editor of *The George Washington Law Review*. I write to apply for a 2024–2025 clerkship in your chambers.

Enclosed, please find my resume, law school transcript and a writing sample. Professor Paul Schiff Berman, Professor Cheryl Kettler and the Honorable Dale Durrer will provide letters of recommendation in support of my application. I am happy to provide additional references upon request.

I welcome the opportunity to discuss my qualifications further. Thank you for your consideration.

Sincerely,



Kelsey Dion

Kelsey M. Dion

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EDUCATION

The George Washington University Law School, Washington, DC
J.D., expected May 2024

- George Washington Scholar (top 15% of class, as of Spring 2023)
- Activities: Articles Editor for *The George Washington Law Review*, Moot Court Board, Civil Procedure Teaching Assistant, Research Assistant to Professor Paul Schiff Berman
- Upcoming: Dean's Fellow (Fall 2023–Spring 2024)

Tufts University, Medford, MA
B.A., in International Relations & Spanish, with a minor in History, *cum laude,* May 2019

- Activities: Varsity Softball Team, three-time recipient of NESCAC All-Academic Honors
  Founding Member of Tufts University Chapter of the College Diabetes Network
- Study Abroad: Madrid, Spain

EXPERIENCE

Skadden, Arps, Slate, Meagher & Flom, Washington, DC
Summer Associate, May 2023–July 2023

- Worked closely with associates and partners in the litigation group
- Performed research and drafted memorandum on a variety of substantive legal questions, ranging from civil litigation to congressional and white collar investigations

United States District Court for the District of Columbia, Washington, DC
Judicial Intern for Judge Randolph D. Moss, Fall 2022

- Conducted research and drafted opinions on issue arising from civil and criminal cases pending before the District Court
- Revised citations in draft opinions to comply with Bluebook formatting

Campaign for the Fair Sentencing of Youth, Washington, DC
Legal Intern, Summer 2022

- Researched juvenile sentencing precedent to write legal memorandum identifying priority states for future legislative sessions
- Evaluated state-level legislation and researched potential challenges to the implementation of new policies

Cleary Gottlieb Steen & Hamilton, New York, NY
Corporate Paralegal, July 2019–August 2021

- Assisted with due diligence, drafting, and translating of documents to prepare filings for the SEC
- Organized review of internal client data and country-specific financial research for offering documents
- Liaised between attorneys, clients, government agencies and opposing counsel to assist with successful closings for the firm's international capital markets and sovereign debt practice groups

Pro Bono Work

- Organized Legal Outreach negotiation workshop for 20 low-income and first-generation high school students
- Communicated with Tanzanian counsel to discuss case strategy and coordinate resources as paralegal support for Cleary's Anti-Death Penalty project
- Coordinated prison visits, compiled court filings, and organized client research as paralegal support for Cleary's Domestic Violence Survivors Justice Act initiative

COMMUNITY INVOLVEMENT

The Brave House, Brooklyn, NY, *Youth Advocate,* January 2020-August 2021

INTERESTS

Spanish Language and Literature, Running, Volunteer Youth Softball Coach

THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G33055419
Date of Birth: 18-MAR

Date Issued: 05-JUN-2023

Record of: Kelsey M Dion

Page: 1

Student Level: Law
Admit Term: Fall 2021

Issued To: KELSEY DION
KELSEYDION@GWU.EDU

REFNUM:5607269

Current College(s):Law School
Current Major(s): Law

GEORGE WASHINGTON UNIVERSITY CREDIT:

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Fall 2021			
Law School			
Law			
LAW 6202	Contracts Swaine	4.00	A-
LAW 6206	Torts Turley	4.00	A-
LAW 6212	Civil Procedure Berman	4.00	A
LAW 6216	Fundamentals Of Lawyering I Kettler	3.00	A
Ehrs 15.00 GPA-Hrs 15.00 GPA 3.822			
CUM 15.00 GPA-Hrs 15.00 GPA 3.822			
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			
Spring 2022			
Law School			
Law			
LAW 6208	Property Kieff	4.00	A
LAW 6209	Legislation And Regulation Schwartz	3.00	B+
LAW 6210	Criminal Law Weisburd	3.00	A-
LAW 6214	Constitutional Law I Cheh	3.00	B+
LAW 6217	Fundamentals Of Lawyering II Kettler	3.00	A
Ehrs 16.00 GPA-Hrs 16.00 GPA 3.687			
CUM 31.00 GPA-Hrs 31.00 GPA 3.753			
Good Standing			
DEAN'S RECOGNITION FOR PROFESSIONAL DEVELOPMENT			
GEORGE WASHINGTON SCHOLAR			
TOP 1%-15% OF THE CLASS TO DATE			

********** CONTINUED ON NEXT COLUMN **********

SUBJ NO	COURSE TITLE	CRDT	GRD PTS
Fall 2022			
Law School			
Law			
LAW 6230	Evidence Durrer	3.00	A
LAW 6520	International Law Steinhardt	4.00	A-
LAW 6668	Field Placement Mccoy	3.00	CR
LAW 6669	Judicial Lawyering Canan	2.00	B+
Ehrs 12.00 GPA-Hrs 9.00 GPA 3.704			
CUM 43.00 GPA-Hrs 40.00 GPA 3.742			
Good Standing			
GEORGE WASHINGTON SCHOLAR			
TOP 1% - 15% OF THE CLASS TO DATE			
Spring 2023			
LAW 6360	Criminal Procedure	4.00	B+
LAW 6380	Constitutional Law II	4.00	A-
LAW 6400	Administrative Law	3.00	A-
LAW 6554	International Criminal Law	2.00	CR
Ehrs 13.00 GPA-Hrs 11.00 GPA 3.545			
CUM 56.00 GPA-Hrs 51.00 GPA 3.699			
Good Standing			
GEORGE WASHINGTON SCHOLAR			
TOP 1% - 15% OF THE CLASS TO DATE			
Fall 2022			
Law School			
Law			
LAW 6657	Law Review Note Credits In Progress: 1.00	1.00	----------
Spring 2023			
LAW 6657	Law Review Note Credits In Progress: 1.00	1.00	----------
Fall 2023			
LAW 6218	Prof Responsibility & Ethics	2.00	----------
LAW 6232	Federal Courts	3.00	----------
LAW 6250	Corporations	4.00	----------
LAW 6644	Moot Court - Van Vleck	1.00	----------
LAW 6658	Law Review Credits In Progress: 11.00	1.00	----------

********** CONTINUED ON PAGE 2 **********

Katie Cloud
Interim University Registrar

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THE GEORGE WASHINGTON UNIVERSITY

WASHINGTON, DC

OFFICE OF THE REGISTRAR

GWid : G33055419
Date of Birth: 18-MAR

Date Issued: 05-JUN-2023

Record of: Kelsey M Dion

Page: 2

SUBJ NO	COURSE TITLE	CRDT	GRD PTS

********** TRANSCRIPT TOTALS **********

	Earned Hrs	GPA Hrs	Points	GPA
TOTAL INSTITUTION	56.00	51.00	188.67	3.699
OVERALL	56.00	51.00	188.67	3.699

########## END OF DOCUMENT ##########

Katie Cloud
Interim University Registrar

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Office of the Registrar
THE GEORGE WASHINGTON UNIVERSITY
Washington, DC 20052

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TRANSFER CREDIT

Transfer courses listed on your transcript are bonafide courses and are assigned as advanced standing. However, whether or not these courses fulfill degree requirements is determined by individual school criteria. The notation of TR indicates credit accepted from a postsecondary institution or awarded by AP/IB exam.

EXPLANATION OF COURSE NUMBERING SYSTEM

All colleges and schools beginning Fall 2010 semester:

1000 to 1999	Primarily introductory undergraduate courses.
2000 to 4999	Advanced undergraduate courses that can also be taken for graduate credit with permission and additional work.
5000 to 5999	Special courses or part of special programs available to all students as part of ongoing curriculum innovation.
6000 to 6999	For master's, doctoral, and professional-level students; open to advanced undergraduate students with approval of the instructors and the dean or advising office.
8000 to 8999	For master's, doctoral, and professional-level students.

All colleges and schools except the Law School, the School of Medicine and Health Sciences, and the School of Public Health and Health Services before Fall 2010 semester:

001 to 100	Designed for freshman and sophomore students. Open to juniors and seniors with approval. Used by graduate students to make up undergraduate prerequisites. Not for graduate credit.
101 to 200	Designed for junior and senior students. With appropriate approval, specified courses may be taken for graduate credit by completing additional work.
201 to 300	Primarily for graduate students. Open to qualified seniors with approval of instructor and department chair. In School of Business, open only to seniors with a GPA of 3.00 or better as well as approval of department chair and dean.
301 to 400	Graduate School of Education and Human Development, School of Engineering and Applied Science, and Elliott School of International Affairs – Designed primarily for graduate students. Columbian College of Arts and Sciences – Limited to graduate students, primarily for doctoral students. School of Business – Limited to doctoral students.
700s	The 700 series is an ongoing program of curriculum innovation. The series includes courses taught by distinguished University Professors.
801	This number designates Dean's Seminar courses.

The Law School

Before June 1, 1968:

100 to 200	Required courses for first-year students.
201 to 300	Required and elective courses for Bachelor of Laws or Juris Doctor curriculum. Open to master's candidates with approval.
301 to 400	Advanced courses. Primarily for master's candidates. Open to LL.B or J.D. candidates with approval.

After June 1, 1968 through Summer 2010 semester:

201 to 299	Required courses for J.D. candidates.
300 to 499	Designed for second- and third-year J.D. candidates. Open to master's candidates only with special permission.
500 to 850	Designed for advanced law degree students. Open to J.D. candidates only with special permission.

School of Medicine and Health Sciences and
School of Public Health and Health Services before Fall 2010 semester:

001 to 200	Designed for students in undergraduate programs.
201 to 800	Designed for M.D., health sciences, public health, health services, exercise science and other graduate degree candidates in the basic sciences.

CORCORAN COLLEGE OF ART + DESIGN

The George Washington University merged with the Corcoran College of Art + Design, effective August 21, 2014. For the pre-merger Corcoran transcript key, please visit http://go.gwu.edu/corcorantranscriptkey

THE CONSORTIUM OF UNIVERSITIES OF THE WASHINGTON METROPOLITAN AREA

Courses taken through the Consortium are recorded using the visited institutions' department symbol and course number in the first positions of the title field. The visited institution is denoted with one of the following GW abbreviations.

AU	American University	MMU	Marymount University
CORC	Corcoran College of Art & Design	MV	Mount Vernon College
		NVCC	Northern Virginia Community College
CU	Catholic University of America	PGCC	Prince George's Community College
GC	Gallaudet University	SEU	Southeastern University
GU	Georgetown University	TC	Trinity Washington University
GL	Georgetown Law Center	USU	Uniformed Services University of the Health Sciences
GMU	George Mason University		
HU	Howard University	UDC	University of the District of Columbia
MC	Montgomery College	UMD	University of Maryland

GRADING SYSTEMS

Undergraduate Grading System

A, Excellent; *B,* Good; *C,* Satisfactory; *D,* Low Pass; *F,* Fail; *I,* Incomplete; *IPG,* In Progress; *W,* Authorized Withdrawal; *Z,* Unauthorized Withdrawal; *P,* Pass; *NP,* No Pass; *AU,* Audit. When a grade is assigned to a course that was originally assigned a grade of *I,* the *I* is replaced by the final grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 2011: The grading symbol RP indicates the class was repeated under Academic Forgiveness.
Effective Fall 2003: The grading symbol R indicates need to repeat course.
Prior to Summer 1992: When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I/* and the grade.
Effective Fall 1987: The following grading symbols were added*: A-, B+, B-, C+, C-, D+, D-.*
Effective Summer 1980: The grading symbols: *P,* Pass, and *NP,* No Pass, replace *CR,* Credit, and *NC,* No Credit.

Graduate Grading System

(Excludes Law and M.D. programs.) *A,* Excellent; *B,* Good; *C,* Minimum Pass; *F,* Failure; *I,* Incomplete; *IPG,* In Progress; *CR,* Credit; *W,* Authorized Withdrawal; *Z,* Unauthorized Withdrawal; *AU,* Audit. When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.
Effective Fall 1994: The following grading symbols were added: *A-, B+, B-, C+, C-* grades on the graduate level.

Law Grading System

A+, A, A-, Excellent; *B+, B, B-,* Good; *C+, C, C-,* Passing; *D,* Minimum Pass; *F,* Failure; *CR,* Credit; *NC,* No Credit; *I,* Incomplete. When a grade is assigned to a course that was originally assigned a grade of *I,* the grade is replaced with *I* and the grade. Through Summer 2014 the *I* was replaced with *I* and the final grade.

M.D. Program Grading System

H, Honors; *HP,* High Pass; *P,* Pass; *F,* Failure; *IP,* In Progress; *I,* Incomplete; *CN,* Conditional; *W,* Withdrawal; *X,* Exempt, *CN/P,* Conditional converted to Pass; *CN/F,* Conditional converted to Failure. Through Summer 2014 the *I* was replaced with *I* and the final grade.

For historical information not included in the transcript key, please visit http://www.gwu.edu/transcriptkey

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

June 21, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am writing to express my unqualified support of Kelsey M. Dion's application for a judicial clerkship in your chambers. I know Ms. Dion particularly well because she was my student as a first-year law student at The George Washington University Law School (GW) during the 2021-2022 academic year, and we have maintained a relationship since then.

Superior First-Year Performance
My academic relationship with Ms. Dion began in August 2021, when she became a student in the First-Year class at GW. My course lasted for two semesters and covered legal research, predictive legal analysis, persuasive argumentation, legal citation, oral advocacy, and various ethics issues. As part of that program, Ms. Dion prepared two legal memoranda, a trial brief, and an appellate brief. She also argued off of both of her briefs.

Ms. Dion possesses numerous talents and has developed the necessary skills for success in supporting the judicial process. She ranks high in her class, demonstrates the commitment necessary to master new and more challenging skills—both in doctrinal and practice skill courses, and, as explained more below, has a stellar attitude about handling challenges.

She has enhanced her outstanding First-Year accomplishments during her recent judicial internship and participation in such activities as a member of *The George Washington Law Review* and Moot Court Board.

Leadership Success in Dean's Fellow Role
Ms. Dion also has served as a Teaching Assistant and a Research Assistant to members of our faculty. In these capacities, she has devoted significant time to honing critical thinking skills and to aiding others do the same. It may be that Ms. Dion spent two years working at a well-respected law firm prior to attending law school or that she is a skilled writer and speaker, but it was apparent from her participation in collaborative assignments in my Fundamentals of Lawyering class that she possessed a level of understanding of critical principles that made it possible for her to be of immediate assistance to colleagues. I would expect her to show that same level of cooperation with peers during a clerkship in your chambers. As a result of my observation of her skill in working with others, I hoped she might serve as a Dean's Fellow (Teaching Assistant) for my students in the coming year. Sadly, our schedules did not work out, but I was delighted to recommend her to one of my colleagues. I anticipate that she will make an excellent addition to his class.

With respect to her own writing, Ms. Dion consistently demonstrated excellence in research, writing, and identifying issues and approaches for resolving them. Her memoranda and briefs were outstanding in her class — all of whom worked hard. I would match her skills against those of the best law students with whom I have worked. She will prepare the most nuanced analysis with a keen eye on what is practicable under the circumstances.

Prospects for Success in Clerkship
Ms. Dion easily expresses her thoughts on straightforward and complex issues in an articulate manner that sometimes does not appear in law students until the third year of law school or in practice. I have found her legal research thorough, her legal analysis grounded in logic, and her legal writing of superior quality.

In summary, Ms. Dion is everything an employer could want: committed, insightful, detail-oriented, well balanced in her analytical and communication skills, able to receive and offer instruction, able to work together or independently, and deserving of trust. These skills should serve her well in the capacity of judicial clerk. For these reasons, I unreservedly recommend her for a judicial clerkship.

Please let me know if I may elaborate on these credentials.

Very Truly Yours,

Cheryl A. Kettler
Associate Professor of Fundamentals of Lawyering

Cheryl Kettler - ckettler@law.gwu.edu - 202-994-0976

June 21, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write in personal support of Ms. Kelsey Dion's application for a clerkship. I am a Circuit Court Judge in Virginia and a Professorial Lecturer of Law at the George Washington University Law School.

I teach Evidence at GWU and Kelsie was a student in my Evidence class. The class had sixty students and Kelsey stood out as one of the most prepared. She possessed an excellent grasp of the Federal Rules of Evidence and contributed enormously to class discussions. She was a frequent visitor at office hours and asked questions that demonstrated a high degree of intellectual curiosity.

If I had funding to hire a law clerk, she would be my first choice. She also has previous judicial clerkship experience.

Please do not hesitate to contact me with any questions or comments.

With best wishes,

Sincerely,

Dale B. Durrer

Professorial Lecturer in Law

durrer@law.gwu.edu

The George Washington University Law School
2000 H Street NW
Washington, DC 20052

June 21, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am very pleased to recommend Kelsey Dion for a clerkship in your chambers. Kelsey has excellent grades, prior judicial internship experience with a federal district court judge, and she is a bright-spirited, even-tempered person who genuinely cares for others and will likely work well in a chambers environment. I am sure she is worth your serious consideration.

Kelsey was in my 35-person Civil Procedure section. Because it's a small class, I get to know the students very well. As it happens, her particular 1L year was a difficult year for me to get to know students because they were all wearing masks, but Kelsey was an exception because she was so clearly a standout performer in class discussions. I noticed her quickly because she was completely on top of the material the very first time I called on her. Then, as the semester progressed I grew more and more impressed, as she was always ready with a response that indicated a deeper understanding of legal reasoning and analysis than I usually see in first semester 1L students.

Kelsey has a great instinct for legal analysis, and she loved all the curlicues of Civil Procedure. My experience is that the students who really get into Civil Procedure are the ones who are likely to excel as law clerks, because most of what goes on in the real world of law involves precise parsing of detailed legal regimes, and Civil Procedure establishes that path.

I asked Kelsey to be my Teaching Assistant this year, both because I felt she had a great grasp of the material and because she seemed to genuinely want to help other students. And she did an excellent job, leading review sessions, drafting comments on practice exams, and keeping me organized throughout the semester. She also helped with cite-checking and other research related to a law review article I wrote this year, and her work was strong.

Finally, Kelsey has a bright, caring personality, and she was a very good mentor to the 1L students in my Civ. Pro. Class this year. She reached out to lots of students, even beyond the normal Teaching Assistant responsibilities, and it's clear that she really cares about others. Particularly given her prior experience working in a federal judicial chambers, I strongly suspect she would be a valuable addition to any chambers family, both from a work and from an inter-personal point of view. Please feel free to contact me if there is any further information I can provide.

Best regards,

Paul Schiff Berman

Paul Berman - pberman@law.gwu.edu - 202-569-6837

Kelsey M. Dion

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WRITING SAMPLE

The attached sample is a mock opinion that I submitted for my Judicial Lawyering course during the fall 2022 semester. The assignment required students to take a closed universe of facts from a real case before the D.C. Superior Court and draft an opinion in response to a pending evidentiary issue. Please note that this writing sample is my own work and has not been substantially edited by any other person.

All individual names and personal details from the original case have been changed to protect anonymity.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Criminal Division – Felony Branch

MEMORANDUM OPINION AND ORDER

This Court was called upon to consider a motion in limine i) to compel Defendant James Rink ("Rink") to display certain of his tattoos to the jury at trial and ii) to admit transcript evidence of a 2015 interview that Rink had with police in which he discussed the meaning of these tattoos. Gov't Mot. at 1, 4.

Rink opposes the motion on the grounds that it is irrelevant, prejudicial, and a violation of his Fifth Amendment rights. Def. Opp. at 1.

For the reasons that follow, the Court will **DENY** the Government's Motion.

I. BACKGROUND

A. Factual Background

The charges against Rink were filed in response to a shooting in the parking lot of Palm Terrace Apartment Complex, in the 700 block of S Street N.W., on November 14th, 2020. Def. Opp. at 2. The Government alleges Rink shot his firearm in an attempt to kill Richard Roe, Gov't Reply at 1, but instead fatally struck Mary Lawson, a sixteen-year-old female. Gov't Mot. at 1. The Prosecution further alleges that Olivia Styles ("Styles"), a juvenile, was present in the parking lot and witnessed the shooting. *Id.* at 2.

B. Procedural History

Rink was charged with first-degree murder while armed and related firearms offenses in November of 2020. Gov't Mot. at 1. Following his indictment, a grand jury returned an additional charge of obstructionist conduct in violation of D.C. Code §§ 22-722(a)(6) and 22-722(a)(2)(A). The Court granted a motion to join the obstruction charge with the other charges pending against him. *Id.* at 2.

The accusation of obstruction arose in response to Styles' appearance and testimony in front of a grand jury. Styles was subpoenaed to appear in court in February of 2021. Def. Opp. at 2. In her first appearance, Styles testified that she was unable to identify any person in surveillance videos from the night of the shooting. *Id.* When she was called to testify for a second time in December 2021, however, Styles identified the man in surveillance videos as [Defendant] Rink. *Id.* When asked why her statements differed from the original hearing, Styles explained that she had downplayed her testimony in February because she was "scared" and believed she was "the only eyewitness." *Id.*

In the time between Lawson's killings and Style's initial appearance in front of the grand jury, the Government alleges Rink communicated with Styles in an attempt to influence her statements through intimidation. Gov't Mot. at 2. Styles testified that, prior to her first grand jury appearance, Rink had called her from jail, stating "you know what time it is?" *Id.*; Def. Opp. at 2. In her testimony in December 2021, Styles was asked explicitly what she thought Rink meant in this call and she speculated, "[Defendant] was basically saying, … he not mad. Because he knows I have to come down here." Def. Opp. at 2.

The Court previously admitted a jail call between Rink and an unidentified caller. Gov't Mot. at 2. In this call, Rink discusses threats he made to an unidentified female, stating, among other things, "I called that bitch and I threatened her" and "I might send you over there to piece her ass up."[1] *Id.* at 3.

The Government now moves to admit two additional pieces of evidence relating to the charge. The first is the transcript of an interview police conducted with Rink in 2015, after he

[1] The Defendant argues that this jail call is inadmissible. *See* Def. Opp. at 1. The Court previously ruled to admit this evidence, and therefore will not revisit the question of admissibility here.

was shot walking home from work (hereinafter, the "transcript"). *Id.* at 4. In this interview, Rink refused to give up the identity of the individual who shot him. He explains the connection between his tattoos and his philosophy on "snitching to the police." *Id.* at 4–7. The Government also seeks to compel Rink to show the tattoos referenced in this interview at trial. *Id.* at 1. They allege that this evidence, if admitted, will show "Both Defendant and Styles states of mind" and provide "context" on the contacts that took place between Styles and Rink. *Id.* at 4.

II. ANALYSIS

Defendant argues that the evidence of his tattoos and the transcript of his 2015 conversation with police are inadmissible because they are irrelevant, unfairly prejudicial, and violate his Fifth Amendment right against self-incrimination. Def. Opp. at 1.

The Court will address each of these arguments in turn.

A. Relevance of Evidence

For evidence to be admissible at trial, it must be relevant. "Relevant evidence is evidence that 'tends to make the existence or nonexistence of a fact more or less probable than would be the case without that evidence.'" *Richardson v. U.S.*, 98 A.3d. 178, 186 (D.C. 2014) (citing *In Re L.C.*, 92 A.3d 290, 297 & n. 21). In evaluating relevance, the court looks to whether the evidence is "related logically to the fact that it is offered to prove, … the fact sought to be established by the evidence [is] material, and the evidence [is] adequately probative of the fact it tends to establish." *Foreman v. U.S.*, 792 A.2d 1043, 1049 (D.C. 2002) (internal citations omitted). The Court notes that the standard for relevance is "not a particularly high bar for the proponent of the evidence to satisfy." *See Richardson*, 98 A.3d. at 186.

Here, the first inquiry is what the Government is offering the transcript and tattoos to prove and whether these facts are material to the obstructionist conduct charge. The next step is to evaluate whether the tattoos and transcript evidence would be probative of those facts.

1. *What is the evidence offered to prove?*

The Government's Motion states that the tattoos and transcript are being offered to show "both the Defendant and witness's understanding of the Defendant's state of mind" and to provide "context [for] the contacts between Ms. Styles and the Defendant," specifically, Defendants' "ability to contact Styles." Gov't. Mot. at 2, 4.

In its reply, however, the Government attempts to reframe the evidence as showing "a party opponent admission." Gov't. Reply at 2, 5. A party may not raise new arguments or issues in a reply brief. *See Akassy v. William Penn Apartments Ltd. Partnership*, 891 A.2d 291, 304 n. 11 (D.C. 2006) ("This issue was not raised in the [Plaintiff]'s brief, and therefore, the argument exceeds the permissible scope of a reply brief"). Because the original motion did not argue that the evidence at issue was being offered as a party opponent admission, the Court will only consider the arguments set forth in the original motion.

A declaration made out-of-court, like the statements in the transcript, qualifies as inadmissible hearsay if it is offered for truth. It is admissible as an exception to hearsay, however, if it is offered to show the state of mind of the declarant. *Clark v. U.S.*, 412 A.2d 21, 25 (D.C. 1980). Here, the declarant, for purposes of the transcript evidence, is Rink. The Government therefore cannot offer this evidence to show anything about Styles' state of mind or her understanding of Rink's state of mind.

2. *Are Defendant's "state of mind" and "context [on] the conversation between [Defendant] and Styles" material to the offense?*

To evaluate whether Defendant's state of mind and the context of the conversation between Defendant and Styles are material, the Court must consider the statutory elements of the offense. Defendant is charged under §§ 22-722(2)(A) and 22-722(6) of the D.C. Criminal Code. These sections state, in part, that obstructionist conduct occurs when an individual "*knowingly* …endeavors to influence, intimidate, or impede a witness… with intent to influence, delay, or prevent the truthful testimony of the person in an official proceeding," or "*corruptly*, or by threats of force, … endeavors to obstruct or impede the due administration of justice in any official proceeding." D.C. Code §§ 22-722(2)(A), 22-722(6) (emphasis added).

Both sections of the statute require that the defendant acted with an intention to obstruct justice. Evidence of obstruction would be material if it "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Boyd v. U.S.*, 908 A.2d 39, 58 (D.C. 2006). Here, context on the alleged call and Rink's state of mind while making the call could help a jury consider whether his actions fit the definition of obstructionist conduct. Rink's state of mind and additional context could provide evidence of whether Rink sought to intimidate Styles on this call, as the Government alleges, Gov't Mot. at 2, or whether Defendant called to explain that he was "not mad" and knew Styles had to appear in court, as the Defense alleges, Def. Opp. at 2. Evidence of Defendant's "life codes" and "his opinion about witnesses who don't mind their own business" could, at least in theory, clarify circumstances that are material to this case. Gov't Reply at 2.

3. Are the tattoos and transcript probative of these facts?

The Court next considers whether the Defendant's tattoos and transcript evidence help prove what they are offered to show.

Evidence that is probative of state of mind can take many forms. *See, e.g. Rink v. U.S.*, 388 A.2d 52 (D.C. 1978) (holding that prior conduct toward the victim was relevant to state of mind); *Bennett v. U.S.*, 375 A.2d. 499 (D.C. 1977) (holding that verbal statement "I am scared of [Defendant]" was admissible to show state of mind). Here, the Government alleges that the Defendant's motive for calling Styles was to intimidate her and influence her testimony in front of the grand jury. Gov't Mot. at 2. The Court notes that the transcript evidence and related tattoos are from six years ago. That said, intent to commit a crime can develop over time, and it is possible that the tattoos and transcript could provide some insight on what spurred this intent to intimidate a Styles. While the strength of this evidence may be minimal, given that large time between the transcript statements and the events in this case, this evidence is not, per se, irrelevant.

With respect to the Government's contention that this evidence will "place into context the communication between Defendant and Styles," Gov't Mot. at 4, it is not clear how the tattoos and transcript would serve that purpose. The Government specifies in its brief that this the context will show Rink had "the ability to contact Styles." Gov't Mot. at 2. The Court disagrees. The evidence offered by the Government consists of physical markings on Defendant's body, and a conversation between Defendant and police that took place approximately six years ago. Defendant seemingly did not know Styles at this time, and this evidence relates only to Defendant's own conduct and history. This information has no apparent connection to Styles or their conversation, beyond the speculation that it could inform Defendant's state of mind when he contacted her. It does not provide any insight on Defendant's ability to call Styles, nor say anything about the call itself.

The Court concludes that Defendants' tattoos and the transcript evidence satisfy the requirement of relevance only in the limited capacity of showing the Defendant's state of mind with respect to the phone call.

B. Unfair Prejudice

Even if evidence passes an analysis of relevance, "a trial judge has the discretion to exclude relevant evidence if it's probative value is substantially outweighed by the danger of unfair prejudice." *Campos-Alvarez v. U.S.*, 16 A.3d 954, 960 (D.C. 2011). Specifically, "where hearsay statements," like the out-of-court statements represented in the transcript, "have a highly prejudicial nature, they must be excluded, even if they are probative and fall under the state of mind … exception." *Ashby v. United States*, 199 A.3d 634, 656 (D.C. 2019). In determining whether evidence is prejudicial, the Court considers whether its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. *See Johnson v. U.S.*, 683 A.2d 1087, 1090 (D.C. 1996).

Here, although the tattoos and transcript have the slight potential to give context on Defendant's state of mind when he spoke to Styles, there are substantial indicators that this evidence could be confusing or prejudicial.

First, while there is exhaustive list of what can be considered representative of a declarant's state of mind, there are several factors that could complicate a jury's consideration of the tattoos and transcript evidence. A trial judge should exclude "evidence that is too remote in time and place, or completely unrelated or irrelevant to the offense charged" *Winfield v. United States*, 676 A.2d 1, 5 (D.C. 1996) (en banc).

The evidence presented here is too remote, both temporally and factually, from this case. Considering first the timeline, Defendant's statements to police were made approximately six years ago and, presumably, he got the tattoos in question prior to that point. Def. Opp. at 2. The transcript statements were the result of an interview with police after Defendant himself was shot, in which the detective wanted Defendant to identify the shooter. Tr. at 4. These statements are likely reflective of Rink's state of mind about a particularly jarring scenario, in which he was a victim. The statements were made, in part, about the specific individual that the detective was hoping to identify. *See id.* at 8. In the context of the transcript, many of Defendant's answers were responding to questions about the shooting. For instance, at the beginning of the conversation, the detective references directly what happened to Rink, stating, "If you run up on somebody and shoot them., that don't make you a snitch." *Id.* at 1. Defendant's answers, specifically the threatening language, appear to be in reference to the person who shot him, in part, "I might try to put the knife in him when we get outta jail, but I ain't going to tell on him. You know what I mean?" *Id.* at 8.

When state of mind evidence is used, "the declarant's statements are highly probative of his feelings and can be considered competent evidence of his *then existing mental state*." *Clark*, 412 A.2d at 30 (emphasis added). Put simply, it is difficult to establish how the transcript statements, made in response to a different factual scenario many years prior, have a strong nexus to his mental state at the time he allegedly sought to intimidate Styles.

This Court has previously found evidence inadmissible in cases where both the window of time between the prior acts was much shorter, and the factual similarity between circumstances much closer than this case. *See, e.g., Wilson v. U.S.*, 711 A.2d 75, 78 (D.C. 1998) (holding that evidence of a crime that took place three days prior, in the same area, was properly

excluded at trial to show that another person may have committed the offense because there was not a enough of a factual link between the crimes); *Bruce v. United States*, 820 A.2d 540, 546 (D.C. 2003) ("the fact that two dissimilar robberies took place in the same block over a four-month period adds nothing to the weight of [defendant]'s showing").

The Government is correct in asserting that the law does not require the prosecution to begin its presentation in the middle of a sequence of interrelated events. *See* Gov't Reply at 5. The events here, however, are hardly interrelated. Alleging that statements in the transcript show a state of mind that, six years later, influenced the Defendant's interactions with Styles would require a jury to engage in a significant amount of speculation. This court has previously noted that if "the probative value of this evidence… is so slight that if presented to the jury it would have required them to engage in idle speculation" it may not be admitted. *See Bruce,* 820 A.2d at 546. Put simply, the evidence offered in this case is only "marginally relevant, too remote in time and place, and thus far too speculative[.]" *Id.* (internal quotations omitted).

Perhaps more importantly, while this evidence is framed by the Government as probative of "state of mind," the Court fears that it is more likely that a jury will view this as evidence that shows Defendant's propensity to act against someone he perceives as a snitch. Propensity evidence shows a defendant's disposition to commit a charged offense, from which the jury improperly could infer the defendant did commit the offense. *See Harrison v. U.S.*, 30 A.3d 169, 176 (D.C. 2011). This evidence, unlike state of mind evidence, is inadmissible. *Id.* The Government concedes in their brief that their intention is to show Defendants prior acts and beliefs may be indicative of his future conduct, stating, "The fact that the defendant, who has held these opinions about snitches for some 20 years … [and] tattoo[ed] them to his body makes

the fact that his specific intent was to obstruct justice more likely than if the defendant had no opinions on snitches or witnesses." Gov't Reply at 2.

While limiting instructions are often provided by a trial judge to explain the capacity in which a juror can consider a particular piece of evidence, see *Johnson*, 387 A.2d at 1086, the delineation between using this evidence as an indicator of "state of mind" and unknowingly considering it in the context of "propensity" is nuanced and has the potential to confuse a jury or cause them to misuse the evidence.

The Court finds, on balance, that the minimal probative value this evidence may provide to show Defendant's state of mind is substantially outweighed by its potential for prejudice. For these reasons, the transcript evidence and Defendant's tattoos are inadmissible.

C. Violation of Defendant's Fifth Amendment Rights

Because the balance of relevance and prejudicial harm shows that this evidence is inadmissible, the Court need not address the Fifth Amendment concern. That said, the Fifth Amendment only supports this conclusion.

The Constitution provides that no defendant shall be a witness against himself. U.S. Const. amend. V. Physical traits like tattoos, however, are often admissible for identification purposes. *See, e.g., Jackson v. United States*, 945 A.2d 621, 627 (D.C. 2008). In this capacity, tattoo evidence does not violate the Fifth Amendment.

The Government argues that compelling the Defendant to show his tattoos would not violate his Fifth Amendment rights, likening this case to *Holt v. United States*. 218 U.S. 245 (1910). *Holt* demonstrates that "the prohibition of compelling a man in a criminal court to be witness against himself is … not an exclusion of his body as evidence when it may be material." 218 U.S. at 252–53. The evidence at issue in *Holt*, however, varies widely from the facts here.

In *Holt*, a material question at trial was whether a particular blouse belonged to the defendant. *Id.* at 252. A witness testified that he had seen the defendant put on the blouse and that it had fit him. *Id.* The defendant argued that compelling him to put the blouse on in court violated his Fifth Amendment rights. The Court disagreed, stating that "this objection in principle would forbid a jury to look at a prisoner and compare his features with a photograph in proof." *Id.* This evidence was meant to provide jurors with a visual observation of his physical features - there was no additional meaning to construe from the defendant's body, beyond the fact that the blouse fit him.

Here, however, the tattoos are not offered for visual, physical proof. There is no question of physical fit or the identification of the defendant. As described in the Government's brief and the accompanying transcript, these tattoos are meant to express meaning beyond their physical appearance. The decision in *Holt* specified that the Fifth Amendment prohibits "extort[ing] communication" from an individual in criminal court. *Id.* at 252–53. The Government directly concedes that they intend to use the tattoos to communicate "defendant's life code" and "opinion on snitches." Gov't Reply at 2. Compelling Defendant's to show his tattoos for this purpose would overstep the limitations set by the Fifth Amendment.

III. CONCLUSION

For the foregoing reasons, **Governments'** motion to compel Defendant to show his tattoos and to admit transcript evidence of a 2015 interview with police, Gov't Mot. at 1, 4, is hereby **DENIED.**

SO ORDERED.

Applicant Details

First Name	**Deirdre**
Middle Initial	**N.**
Last Name	**Dlugoleski**
Citizenship Status	**U. S. Citizen**
Email Address	**dnd276@nyu.edu**
Address	**Address** Street **300 4th Street Southeast, Apt. 42** City **Charlottesville** State/Territory **Virginia** Zip **22902** Country **United States**
Contact Phone Number	**18609953079**

Applicant Education

BA/BS From	**Yale University**
Date of BA/BS	**May 2013**
JD/LLB From	**New York University School of Law** **https://www.law.nyu.edu**
Date of JD/LLB	**May 23, 2019**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Moot Court Board**
Moot Court Experience	**Yes**
Moot Court Name(s)	**Moot Court Board**

Bar Admission

Admission(s)	**District of Columbia, New York**

Prior Judicial Experience

Judicial Internships/Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Recommenders

Satterthwaite, Margaret
margaret.satterthwaite@nyu.edu
212-998-6657

Kingsbury, Benedict
benedict.kingsbury@nyu.edu
212-998-6278

Buppert, Gregory
gregory.buppert@defenders.org
202-772-3225

This applicant has certified that all data entered in this profile and any application documents are true and correct.

April 04, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a 2019 graduate of New York University School of Law and am applying for a clerkship in your chambers for the 2024 term or any subsequent term.

I am currently an associate attorney at the Southern Environmental Law Center, where I litigate cases involving natural gas infrastructure before administrative agencies and state and federal courts. This includes drafting memoranda, motions and testimony; interviewing and cross-examining witnesses; and undertaking extensive legal research. Before starting my current position, I worked as a Bertha fellow at EarthRights International, where I completed legal research and drafted memoranda, motions, and briefs in U.S. state and federal courts on corporate accountability for overseas torts and environmental harms. I have also assisted with discovery and settlement. During law school, I obtained extensive litigation and writing experience. I took Federal Courts (taught by Judge Edwards, DC Circuit) and was a member of NYU's Moot Court Board (a journal equivalent), for which I wrote briefs and completed oral arguments at national competitions. In addition, I spent my 2L summer at Norton Rose Fulbright, where I worked closely with attorneys to conduct legal research and individually wrote several client memoranda for project finance litigation cases.

Enclosed please find my resume, writing sample, and transcript. Letters of recommendation from Professor Benedict Kingsbury, Professor Margaret Satterthwaite, and Gregory Buppert will arrive separately. Professor Kingsbury advised my directed research during 3L year; Professor Satterthwaite supervised my work in the Global Justice Clinic; and Mr. Buppert is my direct supervisor at SELC. Below please find the contact information for each of these recommenders:

Prof. Benedict Kingsbury
Vice Dean and Ida Becker Professor of Law
Faculty Director, Guarini Institute for Global Legal Studies
40 Washington Square S., New York, NY 10012
212.998.6278

Prof. Margaret Satterthwaite
Faculty Director and Co-Chair, Center for Human Rights & Global Justice
Faculty Director, Robert L. Bernstein Institute for Human Rights
Director, Global Justice Clinic
245 Sullivan St., New York, NY 10012
212.998.6657

Gregory Buppert
Senior Attorney
Southern Environmental Law Center
120 Garrett Street, Suite 400
Charlottesville, VA 22902
434.977.4090

Respectfully,

/s/
Deirdre N. Dlugoleski

DEIRDRE N. DLUGOLESKI

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EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, NY
J.D., May 2019
Honors: Howard Greenberger Award – *for excellence in comparative law*
Ann Petluck Poses Memorial Prize – *for outstanding clinical work*
National Moot Court Competition Award – *NYCBA Nationals Semi-Finalist*
Global Justice Emerging Scholars Essay Prize
Salzburg-Cutler Fellow in International Law
International Law and Human Rights Fellow
Moot Court Board (journal equivalent)
Dean's Scholarship – *partial tuition scholarship based on academic merit*
Activities: First Generation Professionals, *Professional Development Chair*
Human Rights Scholar, Center for Human Rights & Global Justice

YALE UNIVERSITY, New Haven, CT
B.A. in History, *cum laude*, May 2013
Honors: Fulbright-Nehru Scholar – *Chennai, India*
Phi Beta Kappa
Robert D. Gries Prize – *for the best senior essay in non-European or American history*
South Asian Studies Senior Essay Prize – *for the best senior essay on South Asia*
President's Public Service Fellowship – *for summer work at New Haven non-profits*

EXPERIENCE

SOUTHERN ENVIRONMENTAL LAW CENTER, Charlottesville, VA
Associate Attorney, August 2022 – present
Litigate cases opposing new investment in natural gas infrastructure before administrative agencies and state and federal courts. Draft motions and testimony, interview standing witnesses, and conduct cross-examination. Work with expert witnesses. Conduct legal research and write memoranda as needed.

EARTHRIGHTS INTERNATIONAL, Washington, DC
Bertha Justice Fellow, September 2020 – July 2022
Conducted legal research on U.S. and international law relating to corporate liability for overseas torts. Prepared legal memoranda and filings for U.S. state and federal courts. Worked closely with staff attorneys to write court briefs, including an amicus brief to the Supreme Court. Assisted in managing and updating information (in Spanish) for 200+ plaintiffs in a multi-district class action.

ROBERT F. KENNEDY HUMAN RIGHTS, Washington, DC
Masiyiwa-Bernstein Fellow, September 2019 – August 2020
Conducted extensive legal and factual research for strategic litigation in the Inter-American Court of Human Rights. Drafted briefs, reports, memoranda, testimony, and press releases in English and Spanish.

NORTON ROSE FULBRIGHT, New York, NY
Summer Associate, May 2018 – July 2018
Worked closely with attorneys in the areas of project finance litigation, commercial litigation, and e-discovery. Conducted extensive legal research and writing, with a focus on secured transactions. Wrote client memoranda including memorandum on material breach of contract for a wind energy facility.

PUBLICATIONS

Deirdre N. Dlugoleski, *Undoing historical injustice: the role of the Forest Rights Act and the Supreme Court in departing from colonial forest laws*, 4 INDIAN L. REV. 221 (2020), https://www.tandfonline.com/doi/full/10.1080/24730580.2020.1783941.

Deirdre Dlugoleski
New York University School of Law
Cumulative GPA: 3.42

Spring 2019

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Evidence	Capra	B+	4.0	
Advanced Global Justice Clinic Seminar	Satterthwaite	A	2.0	
American Indian Law	Pevar	A	3.0	
Moot Court Board		CR	1.0	
Role of the Lawyer in Public Life	Bauer	B	2.0	
Spanish for Lawyers	Guerrero-Tabares	CR	2.0	
Advanced Global Justice Clinic	Satterthwaite	A	2.0	

Fall 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Federal Courts and the Appellate Process	Edwards	B+	4.0	
Constitutional Law	Samaha	B	4.0	
Directed Research	Kingsbury	A	2.0	
Moot Court Board		CR	1.0	
Environmental Law and Policy	Revesz	B+	4.0	

Directed Research extended for the full academic year, but credit for this can only be given in one semester at NYU.

Spring 2018

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
International Environmental Law	Rudyk, Stewart	B+	2.0	
Global Justice Clinic	Satterthwaite	A	3.0	
Property	Hulsebosch	B	4.0	
Constitutional Litigation	Koeltl	A-	2.0	
Global Justice Clinic Seminar	Satterthwaite	A	4.0	

Fall 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Quantitative Methods	Rubinfeld, Forrest	A	2.0	
Global Justice Clinic	Satterthwaite	A	3.0	
Corporations	Bubb	B+	4.0	
Marden Competition (Moot Court)		CR	1.0	
Global Justice Clinic Seminar	Satterthwaite	A	4.0	

Spring 2017

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Lawyering	Elmore	CR	2.5	
Criminal Law	Barkow	B	4.0	
Legislation and the Regulatory State	Hills	B+	4.0	
International Law	Weiler	B	4.0	

I also participated in the 1L Reading Group: Cassirer - The Myth of the State (Prof. Mitchell Kane).

Fall 2016

COURSE	INSTRUCTOR	GRADE	CREDIT UNITS	COMMENTS
Contracts	Brooks	B	4.0	
Civil Procedure	Miller	B	5.0	
Lawyering	Elmore	CR	2.5	
Torts	Sharkey	B	4.0	

I also participated in the 1L Reading Group: Cassirer - The Myth of the State (Prof. Mitchell Kane).

April 04, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am happy to submit this letter recommending Deirdre Dlugoleski for a clerkship in your chambers. Ms. Dlugoleski is incredibly bright, highly skilled, and extremely hard working. She is a gifted writer and researcher with outstanding judgment and common sense. She is a generous colleague and a poised communicator. I believe she would make an excellent law clerk.

I have known Ms. Dlugoleski for four years, and my assessment of her is based on an in-depth professional, academic, and personal familiarity with her. She was selected from a large group of applicants for the Global Justice Clinic, which I direct, and she enrolled during her second year at NYU. I was eager to place her on a Clinic project concerning the rights of an indigenous community in Guyana that involved complex international and foreign law issues, as well as a strong data analysis component. Ms. Dlugoleski surpassed all expectations on this project. She rapidly metabolized significant portions of Guyana's mining law, environmental protection law, forestry law, and key instruments protecting indigenous peoples' rights under international law. She then assessed the empirical data the community had gathered against these legal provisions and wrote up a strikingly clear report.

Deirdre's work in the field was equally superlative. Before we traveled to Guyana in January 2018, Deirdre developed two training workshops with her clinic partner for use with our collaborators on the ground. Since both Ms. Dlugoleski and her partner had teaching experience, I expected that both would rise to the occasion. They still exceeded my expectations: I was able to take a back seat and allow them to entirely lead both trainings. The results were well-tailored and engaging, participatory workshops on how indigenous community monitors can target their fact-gathering to demonstrate violations of national and international law.

In addition to the formal training sessions, Ms. Dlugoleski's performance in informal meetings and consultations with our partners was stellar. She approached all of our colleagues as equals, taking every opportunity to learn more about our partners' expertise and knowledge, the challenges they were facing, their objectives for our partnership, and how to improve our work. Throughout the trip, Ms. Dlugoleski was remarkably motivated, proactive, and warm. Resourceful and adaptive, she thrived in this off-the-grid space with no internet or electricity.

Given her outstanding work in the Clinic, I was very pleased when Ms. Dlugoleski offered to spend time in the indigenous villages where we work during the summer of her second year of law school, following her summer clerkship at a law firm. Our clinic partners were excited to welcome her for three weeks, hosting her in several villages and putting her to work on a number of legal projects. While there, Ms. Dlugoleski analyzed the legal requirements imposed by Guyanese and international law on mining companies seeking large-scale environmental licenses. She then conducted a series of interviews in communities concerning the environmental and social risks associated with a proposed gold mine. This work required her to present complex scientific and legal information in a straightforward and concrete style, and to collect community views in an accurate and respectful manner. With the fruit of these interviews, Ms. Dlugoleski drafted a commentary that was later submitted to an official body of the government of Guyana. By the time she left to come back to NYU for the fall semester, Ms. Dlugoleski had transformed in our partners' eyes from a law student assistant to a trusted collaborator in her own right. Ms. Dlugoleski continued to excel in the Advanced Global Justice Clinic during her third year, advancing the ball enormously on the Clinic's work to help our partners integrate legal standards into their monitoring program. By the end of the year it was clear to me that Ms. Dlugoleski was one of the best students I had ever had—and likely ever will have—in the Global Justice Clinic. She was awarded the Petluck Poses Prize for outstanding clinical work at graduation.

In the few years since she graduated, Ms. Dlugoleski has managed to land two of the most coveted fellowships in the human rights world: one at RFK Human Rights and one at Earthrights International. In both organizations, Ms. Dlugoleski engaged in human rights litigation before federal courts, regional tribunals, and international mechanisms. She has also taught several sessions of my human rights advocacy seminar.

I am aware that much of the work I have described in this letter may not seem directly relevant to the role of a federal law clerk. While Ms. Dlugoleski's interests may range across a broader field of interest than some other applicants, I am confident that her analytical abilities, research skills, and adroit writing prepare her to be an excellent law clerk.
In addition to my in-depth knowledge of Ms. Dlugoleski's work and approach, I have come to know her more broadly as a person. I admire and respect her immensely. She is a generous and tireless worker and a wonderful collaborator. She holds herself to incredibly high standards. I recommend her with enthusiasm.

Please do not hesitate to contact me, as I would be very happy to answer any questions you might have.

Yours sincerely,

Margaret Satterthwaite - margaret.satterthwaite@nyu.edu - 212-998-6657

Margaret Satterthwaite
Professor of Clinical Law
Director, Global Justice Clinic
Faculty Director, Bernstein Institute for Human Rights
Faculty Director, Center for Human Rights and Global Justice

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Benedict Kingsbury
Vice Dean and Murry and Ida Becker Professor of Law
Director, Institute for International Law and Justice
Faculty Director, Guarini Institute for Global Legal Studies

November 3, 2022

RE: Deirdre Dlugoleski, NYU Law '19

Your Honor:

I am very pleased to recommend Deirdre Dlugoleski to you. She completed her JD here in May 2019. My knowledge of her work comes primarily from close personal supervision of a major directed research project she undertook during her third year, and for which she received a clear "A" grade. Having got to know her quite well and having seen her research and legal writing abilities in the development of that major paper, my assessment of her as a judicial clerk is very favorable. She is superbly well organized, has tremendous initiative and focus, and holds herself to very high standards. She has an impressive appreciation of law and what is has to offer, and a substantial interest in all aspects of litigation and adjudication, exemplified by her substantial and very dedicated involvement in the NYU Law Moot Court Board. She was a truly outstanding performer in the Global Justice Clinic, taught by my tenured colleague Professor Meg Satterthwaite. Meg told me that in Spring 2019 Deirdre worked in a project in Guyana (where she had spent several weeks in rugged forest the previous summer in connection with the Clinic), with the specific assignment of improving and integrating legal empowerment elements to a territorial and events monitoring program that the Clinic's local partners (an indigenous group) run in their customary and titled territories in South Rupununi, Guyana. Meg said "this work has been complex and could have been overwhelming, but Deirdre's talent, intense focus, and commitment to our partners has translated into contributions beyond what I would have expected of any student or even most junior colleagues…. Deirdre has delved into the laws of Guyana for this work, and her careful attention to the Constitution, relevant mining and forestry statutes, and regulatory framework have been excellent."

A culmination of Deidre's work in the Clinic (on projects in Haiti and Guyana) and her work on the paper I supervised (on India), was Deidre receiving not one but two graduation awards, one for clinical excellence, the other the Howard Greenberger award for the best paper in comparative law.

Deirdre's paper that I supervised was on India's Forest Rights Act of 2006, and practical applications of it and challenges to it, particularly in India's Supreme Court. This is the legislation which formalizes various land, land/forest use, governance and consultation rights

for a large number of traditional dwellers in and users of forests and forest lands in India. The paper is a very thoughtful and well-researched study of how this Act came to be adopted (a large puzzle given it conflicts with interests of major corporations and their clients), how it has been implemented (regulations, court decisions, etc.), how it has survived in the Modi era, and what its implications are. The reach and scale of this statute is enormous – during 2019, the Indian Supreme Court was considering requests by wildlife conservation groups that 21 Indian states expel from protected forest areas nearly 1.9 million families whose tribal claims to land rights under the Act had been rejected. She did a tremendous amount of work digging up data sets on forest cover, demographics, and implementation of the statute in different Indian states, building her understanding not only of the statute but of Indian forest, land, constitutional and procedural law, familiarizing herself with Indian case law, and constructing a persuasive and original analysis. She had gotten interested in India as an undergraduate at Yale, and had a Fulbright there after graduating. Her interest in this particular topic arose when she returned to India for the summer after her first year of Law School, to work at the Human Rights Law Network in Delhi, and had the assignment of preparing a petition to the Indian Supreme Court relating to this statute. It was a real pleasure to supervise her work on this paper. She took suggestions and guidance on board very fully, she was 100% on time with every deadline in the writing process, and she pursued each new aspect of the research and writing with tremendous discipline and hard work. She has abundant drive and initiative, and listens well and carefully. The paper won a prize at an internal scholarly conference here, and she was selected also to present it at the Salzburg Seminar in Washington DC. The paper was subsequently accepted and published by the *Indian Law Review*, a high-quality peer reviewed scholarly journal with eminent editors.

Deirdre combines exceptional drive with a strong interest in law in general and judicial work in particular – it was this set of interests that brought her to Law School, and it has intensified through her work here. She is on the public interest law track – in 2019-20 she held a fellowship at the Robert F Kennedy Center for Justice & Human Rights in Washington, DC, and for the next two years was at Earthrights working on litigation concerning matters such as lender liability and immunity of international organizations. Earlier she has worked in a major commercial law firm (Norton Rose Fulbright). Her interests are wide. She is an impressive person. I am very pleased to recommend her to you.

Yours sincerely,

Benedict Kingsbury

SOUTHERN ENVIRONMENTAL LAW CENTER

120 Garrett Street, Suite 400
Charlottesville, VA 22902

Telephone 434-977-4090
Facsimile 434-993-5549

February 13, 2023

Re: Letter of Recommendation for Deirdre Dlugoleski

Your Honor:

I am writing to recommend Deirdre Dlugoleski for a judicial clerkship in your chambers. I have the pleasure of working with Ms. Dlugoleski at the Southern Environmental Law Center (SELC), one of the nation's premier environmental legal advocacy organizations, where I am a senior attorney and manage a team that she joined in August 2022. My practice involves regulatory advocacy and litigation at all levels of the federal court system related to energy infrastructure.

Over the last nine years at SELC, I have supervised many associate attorneys from top-ranked law schools. Ms. Dlugoleski stands out among this group in several important ways. First, she vigorously engages with the facts which can be dauntingly technical for energy projects. Where other associate attorneys have sometimes found technical details overwhelming, I have been impressed with Ms. Dlugoleski's interest in understanding the details we encounter and her ability to investigate them and identify those with relevance to a given case.

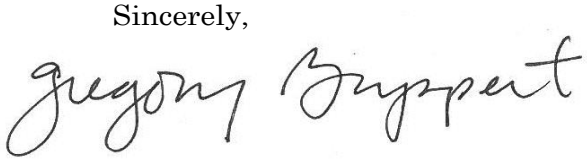
Second, Ms. Dlugoleski is exceptionally organized. She works quickly, comes prepared to meetings, adheres to internal deadlines and workplans, and communicates effectively about her progress. She often takes the initiative without prompting and puts in extra hours in the evening or on the weekend. In addition to managing her assignments efficiently, Ms. Dlugoleski helps me coordinate the significant caseload that our team is handling across six southeastern states including creating a research database of court decisions to help us stay up to date on the developing law of climate change. In her short tenure, she has suggested several tools and techniques to improve the systems of our team. I can quite fairly report that she is unique among the attorneys I have supervised in this respect.

Third, Ms. Dlugoleski has demonstrated a well-developed internal sense of judgment. She is fair-minded when assessing the merits of our legal and factual positions, which makes her a perceptive advocate and I am confident would make her an effective and even-handed law clerk. In the execution of her projects and assignments, Ms. Dlugoleski understands when to ask for additional guidance and when to pursue a lead further on her own in legal or factual research. She always

asks for and graciously accepts constructive feedback on her work product. Ms. Dlugoleski is, of course, a capable and effective legal researcher and writer.

Finally, Ms. Dlugoleski is a thoughtful colleague with a refined sense of humor and has been a welcome addition to our office. For these reasons, I have no reservations in recommending her for a clerkship in your chambers, and I would be pleased to discuss her application at your convenience.

Sincerely,



Gregory Buppert

DEIRDRE N. DLUGOLESKI
300 4th St. SE, Apt. 42 | Charlottesville, VA 22902 | (860) 995-3079 | dnd276@nyu.edu

WRITING SAMPLE

Note of Explanation

This writing sample is a memo I wrote, over a four-day period, in preparation for drafting a section of an amicus brief to the U.S. Supreme Court for *Nestlé USA, Inc. v. Doe*, 593 U. S. ____ (2021). The goal was to explore and evaluate the potential international law arguments for establishing U.S. responsibility for the overseas human rights violations of its corporations.

To: [OMITTED]
From: Deirdre Dlugoleski
Re: potential U.S. liability for extraterritorial corporate actions under international law
Date: 10/9/2020

I. Overview

This document provides a menu of options for attempting to establish United States responsibility for the extraterritorial actions of its corporations under international law (specifically, Nestlé's use of child slave labor in Côte d'Ivoire). First, it discusses the U.S. government's and Supreme Court's treatment of state responsibility with respect to the concerns of the 18th-century United States – essentially, avoiding diplomatic strife and the potential for war. Although it is unlikely that either Mali (the home country of the plaintiffs) or Côte d'Ivoire would threaten war with the U.S. or attempt to invoke state responsibility in the circumstances of the present case, the risk of incurring state responsibility for the actions of private parties maps to the concerns of the Framers and writers of the Judiciary Act.

With this in mind, there are several ways states could potentially invoke the international responsibility of the United States for the extraterritorial torts of its corporations. Most relevant here, the U.S. could be seen as complicit in an internationally wrongful act by allowing the corporation to operate in partnership or collaboration with actors that violate human rights; the U.S. could also be liable for implicitly accepting such a situation through allowing its corporation to undertake its usual activities in Côte d'Ivoire. Moreover, by failing to prevent a U.S. corporation from causing harm overseas, the U.S. could be liable for breaching its obligation of due diligence. The U.S. could also face liability for violating a treaty in which it commits to preventing child slave labor.

In any of these possibilities, however, the odds for reparations are slim. In most of these scenarios, only states can bring claims – which means that the form or distribution of reparations may not be in the best interests of the actual victims. Moreover, with respect to treaty violations, the instrument in question does not specify the jurisdiction of the International Court of Justice (ICJ); under this theory of liability, reparations would be virtually impossible.

II. Discussion of State Responsibility in Government Briefs and the Supreme Court

In its supplemental amicus brief in *Jesner*, the United States notes that "[t]he requisite claim-specific inquiry [with respect to the ATS] necessarily takes place against the backdrop of the ATS's function of providing redress in situations where the international community might consider the United States accountable."[1] For this proposition, the government cites:

- *Kiobel* – "The United States was, however, embarrassed by its potential inability to provide judicial relief to foreign officials injured in the United States. Such offenses against ambassadors violated the law of nations, 'and if not adequately redressed could rise to an issue of war.' The ATS ensured that the United States could provide a forum for adjudicating such incidents."[2]
- *Sosa* – "An assault against an ambassador, for example, impinged upon the sovereignty of the foreign nation and if not adequately redressed could rise to an issue of war. It was this narrow set of violations of the law of nations, admitting of a judicial remedy and at the same time threatening serious consequences in international affairs, that was probably on the minds of the men who drafted the ATS with its reference to tort."[3]
- *RJR Nabisco* – The pages the government cites to in this case do not explicitly address the question of when a tort committed by U.S. citizens, domestically or abroad, could potentially implicate state responsibility.[4]

The discussion in these cases examines the international law concerns of the United States in the 1780s. The main sources the Supreme Court considered include:

- The Federalist papers No. 80 (Hamilton) – "[a]s the denial or perversion of justice . . . is with reason classed among the just causes of war, it will follow that the federal judiciary ought to have cognizance of all causes in which the citizens of other countries are concerned."[5]
- *Federal Jurisdiction over International Law Claims: Inquiries into the Alien Tort Statute* (1985) – "Second, federal jurisdiction was created in connection with the United States' responsibility for injuries to aliens. According to Professors Henkin, Pugh, Schachter, and Smit: 'State responsibility arises only if the act or omission of the state causing the injury is wrongful under international law.' An alien's injury may be directly caused by the state, as through physical injury or confiscation of property. **Such an injury may also**

[1] Supplemental Amicus Brief for the United States at 26, *Jesner et al., v. Arab Bank,* PLC, 138 S. Ct. 1386 (2018) (No. 16-499) 2017 WL 2792284.
[2] *Kiobel v. Royal Dutch Petro. Co.*, 569 U.S. 108, 122-23 (2013) (citing *Sosa v. Alvarez-Machain*, 542 U.S. 692, 715-18 (2004)).
[3] *See Sosa*, 542 U.S. at 715.
[4] The closest the discussion comes is describing the two-step framework for analyzing extraterritoriality in *Morrison* and *Kiobel*: first asking whether the presumption against extraterritoriality has been rebutted, and then, if the statute is not extraterritorial, determining whether the case involves a domestic application of the statute (by looking at the statute's "focus"). If the relevant conduct occurred in the U.S., domestic application is permissible even if other conduct occurred abroad, but "if the conduct relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory." *See RJR Nabisco, Inc. v. European Cmty.*, 136 S. Ct. 2090, 2101 (2016).
[5] THE FEDERALIST No. 80 (Alexander Hamilton).